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THURSDAY, JANUARY 28, 1999 MORNING SESSION

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THE COURT: OKAY. THEN I THINK WE'RE READY FOR OUR NEXT WITNESS.

MR. OHLEMEYER: YOUR HONOR, JAMES J. MORGAN.

THE COURT: ALL RIGHT.

TESTIMONY OF

JAMES J. MORGAN,

A WITNESS CALLED ON BEHALF OF THE DEFENDANT, HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

THE CLERK: PLEASE STATE YOUR NAME.

THE WITNESS: JAMES J. MORGAN.

THE CLERK: PLEASE SPELL YOUR NAME.

THE WITNESS: J-A-M-E-S J. M-O-R-G-A-N.

THE CLERK: OKAY. THANK YOU.

PLEASE TAKE THE STAND.

MR. OHLEMEYER: MAY I, YOUR HONOR?

THE COURT: YES, PLEASE.

DIRECT EXAMINATION

BY MR. OHLEMEYER: Q. MR. MORGAN, WITH THE EXCEPTION OF MS. HENLEY, I THINK YOU ARE THE FIRST WITNESS IN THE CASE WHO IS NOT A DOCTOR. SO WHAT THAT MEANS IS I WILL PROBABLY CALL YOU DOCTOR TWO OR THREE TIMES, AND MS. CHABER WILL INADVERTENTLY DO THE SAME THING.

BUT YOU ARE NOT A DOCTOR; RIGHT?

A. I'M NOT A DOCTOR.

Q. AND AS I UNDERSTAND IT, YOU ARE RETIRED?

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A. I'M RETIRED.

Q. AND FROM WHERE DID YOU RETIRE?

A. I RETIRED FROM PHILIP MORRIS ON NOVEMBER 1ST, 1997, AND I RETIRED AS THE PRESIDENT AND CHIEF EXECUTIVE OFFICER OF PHILIP MORRIS U.S.A., WHICH WAS THE DOMESTIC CIGARETTE DIVISION.

Q. WHAT WAS THE DATE?

A. NOVEMBER 1ST, 1997.

Q. (WRITING ON BOARD)

MS. CHABER: YOUR HONOR, I DO HAVE AN OBJECTION TO COUNSEL, IN THE COURSE OF DIRECT EXAMINATION, WRITING SELECTIVE THINGS.

MR. OHLEMEYER: WELL --

MS. CHABER: I THINK IT'S ARGUMENTATIVE.

MR. OHLEMEYER: WHAT I INTEND TO DO, YOUR HONOR, IS KEEP TRACK OF THE TIME LINE OF THE MAN'S EMPLOYMENT.

MS. CHABER: IF THAT'S ALL IT IS, I HAVE NO OBJECTION. IT WASN'T CLEAR TO ME. OKAY.

MR. OHLEMEYER: Q. AND YOUR POSITION AT THE TIME YOU RETIRED?

A. PRESIDENT AND CHIEF EXECUTIVE OFFICER.

Q. TELL US WHEN YOU STARTED WORKING AT PHILIP MORRIS.

A. JUNE 1963.

Q. AND WHAT WAS YOUR POSITION AT THAT TIME?

A. I WAS A MARKETING TRAINEE.

Q. I'M GOING TO ASK YOU SOME QUESTIONS ABOUT WHAT YOU DID IN BETWEEN AND WHAT POSITIONS YOU HELD IN A FEW

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SECONDS.

BUT CAN YOU TELL ME A LITTLE BIT ABOUT YOURSELF, WHERE YOU GREW UP, WHERE YOU WENT TO SCHOOL?

A. WELL, I GREW UP IN A LITTLE BIT OF EVERYWHERE.

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MY DAD WAS IN BOTH THE SECOND WORLD WAR, THE KOREAN WAR, AND EVEN ALSO WORKED FOR AN OIL COMPANY.

SO I GREW UP IN --BASICALLY, IF YOU SAID "WHERE IS HOME," I'D SAY WESTCHESTER COUNTY, NEW YORK, OUTSIDE OF NEW YORK CITY. BUT I LIVED IN RAPID CITY, SOUTH DAKOTA, I LIVED IN CARACAS, VENEZUELA, I LIVED IN SANTO DOMINGO, I LIVED IN WASHINGTON, D.C. AND I LIVED IN FLORIDA.

Q. YOU WENT TO COLLEGE?

A. I WENT TO PRINCETON UNIVERSITY.

Q. WHEN DID YOU GRADUATE?

A. LATE MAY 1963.

Q. YOU STARTED AT PHILIP MORRIS SHORTLY THEREAFTER?

A. TWO DAYS AFTER I GRADUATED.

Q. CAN YOU DESCRIBE FOR US THE OTHER POSITIONS OR TITLES YOU HAD BETWEEN '63 AND '97 AT PHILIP MORRIS.

A. WELL, I DON'T KNOW IF I CAN GET THEM ALL IN A ROW. FROM 1963 TO 1965, I WAS A MARKETING TRAINEE, WHICH BASICALLY MEANT THAT I ROTATED FROM MARKETING DEPARTMENT TO MARKETING DEPARTMENT IN THREE OR FOUR-MONTH STINTS, MARKETING RESEARCH, ADVERTISING, PRODUCTION, MEDIA, THINGS LIKE THAT.

IN 1965, I SPENT A YEAR AS A RETAIL SALESPERSON IN HOBOKEN, BAYONNE, JERSEY CITY, BASICALLY CALLING ON CIGARETTE OUTLETS, CIGARETTE STORES.

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I RETURNED IN 1966 AND STARTED A SERIES OF BRAND MANAGEMENT POSITIONS, WHERE YOU'RE RESPONSIBLE FOR THE MARKETING, ADVERTISING OF BRANDS. I STARTED -- AS I REMEMBER, I WAS ASSISTANT BRAND MANAGER ON PARLIAMENT AND THE PHILIP MORRIS BRAND. THEN I WAS VIRGINIA SLIMS BRAND MANAGER, AND THEN IN 1969 OR SO, I BECAME THE MARLBORO BRAND MANAGER.

THEN IN 1972 -- I'M GOING TO GUESS -- I BECAME THE ASSISTANT DIRECTOR OF BRAND MANAGEMENT, WHICH MEANT THAT THE BRAND MANAGERS REPORTED TO ME. AND THEN IN '74ISH, I BECAME THE DIRECTOR OF BRAND MANAGEMENT.

IN '75, I BECAME THE ASSISTANT VICE PRESIDENT OR THE VICE PRESIDENT AND ASSISTANT DIRECTOR OF MARKETING, WHICH INCLUDED NOT ONLY BRAND MANAGEMENT BUT THEN PICKED UP THE SALES FORCE RESPONSIBILITIES.

Q. WHAT WAS THAT TITLE AGAIN?

A. ASSISTANT DIRECTOR OF MARKETING. VP, ASSISTANT DIRECTOR OF MARKETING.

IN 1978, I BECAME THE EXECUTIVE VICE PRESIDENT AND DIRECTOR OF MARKETING.

YOU'RE GOING TO RUN OUT OF SPACE THERE (REFERRING TO LIST).

Q. I KNOW.

A. IN 1983, I LEFT PHILIP MORRIS.

Q. AND WHERE DID YOU GO?

A. I WAS RECRUITED OUT OF PHILIP MORRIS, AND I BECAME CHAIRMAN OF ATARI, THE VIDEO GAME COMPANY, LOCATED IN SAN JOSE.

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Q. HOW LONG WERE YOU THERE?

A. I WAS THERE FOR A YEAR, AND WARNER COMMUNICATIONS SOLD THE COMPANY AND MY JOB WENT BYE-BYE.

Q. THEN, DID YOU SUBSEQUENTLY REJOIN PHILIP MORRIS?

A. WELL, FOR THE NEXT FOUR YEARS, I WAS A CONSULTANT. I WORKED FOR AN AD AGENCY. I DID A BUNCH OF THINGS.

AND ON LABOR DAY OF 1988, FIVE YEARS LATER, I REJOINED PHILIP MORRIS.

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Q. AS WHAT?
A. I WORKED FOR THE CORPORATE PLANNING DEPARTMENT, WHICH BASICALLY WAS RESPONSIBLE FOR THE STRATEGIC DIRECTION OF THE CORPORATION.
IN THAT JOB, OVER THE NEXT ROUGHLY FIVE YEARS, I WORKED ON THE MILLER BEER DIVISION, AND I SPENT QUITE A BIT OF TIME AT KRAFT GENERAL FOODS, WHERE ACTUALLY I WAS TRANSFERRED FOR A YEAR TO BE THE EXECUTIVE VICE PRESIDENT OF MARKETING FOR KRAFT GENERAL FOODS.
I RETURNED -- IN THE SPRING OF 1993, I RETURNED TO PHILIP MORRIS U.S.A., BASICALLY TO THE POSITION I HAD LEFT 10 YEARS EARLIER, AS HEAD OF MARKETING AND SALES.
AND THEN, IN DECEMBER OF '94, I WAS MADE PRESIDENT AND CHIEF EXECUTIVE OFFICER.
Q. YOU MENTIONED A BRAND OF CIGARETTES CALLED PHILIP MORRIS.
THE NAME OF THE COMPANY IS PHILIP MORRIS, BUT THERE WAS ALSO A BRAND OF CIGARETTES CALLED PHILIP MORRIS?
A. THERE WAS A BRAND. IT HARDLY EXISTS ANYMORE, BUT

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THERE WAS A BRAND.
Q. THE COMPANY YOU ARE THE PRESIDENT OF HERE IS THE COMPANY THAT ACTUALLY MAKES CIGARETTES?
A. YES, IN THE UNITED STATES.
Q. IS IT FAIR TO SAY, MR. MORGAN, THAT THROUGHOUT THE 30 OR SO YEARS YOU'VE BEEN AT PHILIP MORRIS, THAT MOST OF YOUR WORK INVOLVED MARKETING?
A. YES.
Q. CAN YOU DEFINE OR DESCRIBE FOR US IN GENERAL OR SPECIFIC TERMS, IF NECESSARY, WHAT MARKETING IS.
A. MARKETING IS -- I CAN TELL YOU WHAT IT'S NOT. FIRST, IT'S NOT MANUFACTURING. IT'S NOT MAKING THE PRODUCT.
MARKETING IS A SERIES OF DISCIPLINES THAT INVOLVE ADVERTISING, SALES PROMOTION, MARKETING RESEARCH, PUBLIC RELATIONS, SALES, CUSTOMER SERVICE, DIRECT MARKETING. THAT'S PRETTY MUCH IT.
Q. AND CAN YOU DESCRIBE GENERALLY HOW YOUR WORK OR YOUR ROLE OVER THOSE YEARS RELATED TO THE MARKETING OF CIGARETTES?
A. WELL, IN THE EARLY YEARS, WHEN I WAS INVOLVED IN BRAND MANAGEMENT, IT WAS ADVERTISING AND SALES PROMOTION PRIMARILY. ADVERTISING BEING OBVIOUS, WHEN YOU OPEN A MAGAZINE OR SEE A BILLBOARD.
SALES PROMOTION ARE THINGS LIKE WHEN YOU SEE A SWEEPSTAKES AND SEND IN TWO BOXTOPS AND WIN A TRIP TO SOMEWHERE, OR MORE RECENTLY IN THE CASE OF MARLBORO, WHERE YOU SAVE MILES AND REDEEM THEM THOSE FOR ITEMS.

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Q. CAN I INTERRUPT AND EXPLAIN WHAT I THINK RETAIL SALES IS EXACTLY. WHAT YOU SAY SOUNDED LIKE IT.
A. RIGHT.
Q. LET ME BACK UP.
DOES PHILIP MORRIS ACTUALLY SELL CIGARETTES AT RETAIL?
A. NO. PHILIP MORRIS -- PHILIP MORRIS SELLS CIGARETTES TO DISTRIBUTORS, TO TOBACCO DISTRIBUTORS. IF I REMEMBER -- IT'S BEEN A WHILE -- THE COMPANY WOULD BE LIKE SOZNICK (PHOENETIC) & SONS IN SAN FRANCISCO. THEY ARE CIGARETTE WHOLESALERS. THEY SELL CIGARETTES, CANDY, GUM, COMBS, PENS. THEY BASICALLY SELL TO THE STORES YOU SEE AS NEWSSTANDS, AND THEY SELL THE CIGARETTES TO THOSE STORES.
WE SELL TO THEM, THEY SELL TO THOSE STORES, THE

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RETAILER THEN SELLS TO THE CONSUMER.
Q. SO WHEN YOU WERE IN RETAIL SALES, YOU WEREN'T ACTUALLY OUT SELLING CIGARETTES?
A. NO, NOT REALLY. WHAT I WAS DOING WAS GOING AROUND AND PUTTING UP DISPLAYS, FINDING OUT WHETHER OR NOT THEY HAD OUR BRANDS IN STOCK AND, YOU KNOW, ENCOURAGING THE RETAILER TO ORDER, TO PARTICIPATE IN THE PROMOTION.
Q. SO WHAT IS BRAND MANAGEMENT THEN, SPECIFICALLY?
A. WELL, BRAND MANAGEMENT, AS I SAID, IS THE DISCIPLINE. IT'S A FUNCTION THAT IS RESPONSIBLE PRIMARILY FOR THE ADVERTISING AND SALES PROMOTION PROGRAMS OF AN INDIVIDUAL BRAND.
SO THE BRAND MANAGER ON VIRGINIA SLIMS WOULD BE RESPONSIBLE FOR THE ADVERTISING ON VIRGINIA SLIMS, AND THE

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SALES PROMOTION PROGRAMS AND THE PUBLIC RELATIONS PROGRAMS ON VIRGINIA SLIMS.
Q. YOU LEFT VIRGINIA SLIMS OUT OF THIS (WRITING ON BOARD).
AM I CORRECT YOU WERE BRAND MANAGER OF VIRGINIA SLIMS, PARLIAMENT, PHILIP MORRIS AND ULTIMATELY MARLBORO?
A. YES, THAT'S CORRECT.
Q. AND THEN I TAKE IT, WHEN YOU GOT INTO BRAND MANAGEMENT AS A DIRECTOR AND DIRECTOR OF MARKETING, YOU WERE INVOLVED IN BROADER AND MORE GENERAL ACTIVITIES?
A. THE DIVISION WOULD BE. WHEN I WENT FROM THE DIRECTOR OF BRAND MANAGEMENT TO THE ASSISTANT DIRECTOR OF MARKETING, YOU WOULD PICK UP THE SALES FUNCTION AS A RESPONSIBILITY. YOU'D PICK UP MARKETING RESEARCH AS A RESPONSIBILITY. YOU'D PICK UP MEDIA, "MEDIA" BEING THE DISCIPLINE WHICH ACTUALLY BUYS THE ADVERTISING. WHERE YOU BUY A SIGN OR BUY AN AD IN TIME MAGAZINE, THE MEDIA DEPARTMENT ACTUALLY PURCHASES THAT SPACE.
Q. WHEN YOU BECAME THE DIRECTOR OR VICE PRESIDENT AND DIRECTOR OF MARKETING, DID THAT ESSENTIALLY MEAN THAT EVERYTHING YOU DID UP TILL THEN WAS SOMETHING THAT ULTIMATELY BECAME A FUNCTION FOR WHICH YOU WERE EITHER RESPONSIBLE OR PEOPLE REPORTED TO YOU ON?
A. EXACTLY.
Q. WHY DON'T YOU DESCRIBE FOR US -- THEN I'LL MOVE THIS UNTIL I NEED IT AGAIN. DESCRIBE FOR US HOW THE MARKETING -- I TAKE IT THERE IS A MARKETING DEPARTMENT AT PHILIP MORRIS?

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A. YES, THERE IS.
Q. DESCRIBE FOR US HOW IT'S ORGANIZED.
A. WELL, THE MARKETING DEPARTMENT WOULD BE ORGANIZED WITH THE FUNCTIONS THAT I PREVIOUSLY DESCRIBED. THERE IS A BRAND MANAGEMENT GROUP, WHICH IS RESPONSIBLE FOR THE ADVERTISING AND SALES PROMOTION. THERE IS A SALES DEPARTMENT, WHICH IS RIGHT NOW ABOUT 3,000 PEOPLE AROUND THE UNITED STATES, WHO CALL ON RETAIL OUTLETS TO EXECUTE PROMOTIONAL PROGRAMS. THERE IS A MARKETING RESEARCH DEPARTMENT THAT LOOKS AT DATA REGARDING THE MARKETPLACE, MARKET SHARES, THINGS LIKE THAT. THERE IS A MARKETING SERVICES GROUP, WHICH IS RESPONSIBLE FOR MEDIA.
IT IS RESPONSIBLE FOR FULFILLMENT OF -- CIGARETTE PROMOTIONS HAVE GOTTEN MUCH MORE INVOLVED IN SENDING THINGS LIKE HATS OR WINDBREAKERS OR DUFFLE BAGS OUT TO PEOPLE. THERE'S ACTUALLY A FULFILLMENT DEPARTMENT.
MARKETING SERVICES ALSO HAS A DIRECT MARKETING DEPARTMENT. SO THAT WHEN YOU GET A LETTER OR COUPONS IN THE MAIL, THAT'S PART OF THE DIRECT MARKETING DISCIPLINE.

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AND THOSE ARE THE BASIC FUNCTIONS OF MARKETING.

Q. IN MORE SPECIFIC TERMS IS MARKETING RESEARCH. AND WHAT IS THAT ASPECT OF THE MARKETING DEPARTMENT?

A. MARKETING RESEARCH IS SORT OF THE INTELLIGENCE ARM OF MARKETING. IT'S THE GROUP THAT LOOKS AT INFORMATION RELATING TO THE COMPANY'S PERFORMANCE, INDIVIDUAL BRAND PERFORMANCE. THEY MAY LOOK AT IT BY GEOGRAPHY. THEY MAY LOOK IT OVER DIFFERENT TIME PERIODS. THEY MAY LOOK AT IT DEMOGRAPHICALLY. THEY MAY CONDUCT STUDIES. THEY MAY REVIEW

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STUDIES.

IT IS THE GROUP THAT PROVIDES THE DATA TO THE REST OF THE MARKETING GROUP IN ORDER TO HELP THEM MAKE DECISIONS.

Q. THROUGHOUT YOUR CAREER AT PHILIP MORRIS, DID YOU HAVE OCCASION TO BECOME FAMILIAR WITH AND ACTUALLY MEET OR SPEAK WITH PEOPLE INVOLVED IN MARKETING OF OTHER PRODUCTS BESIDES CIGARETTES?

A. OH, SURE. AS I SAID, I SPENT OVER A YEAR ON MILLER BEER IN MILWAUKEE. I SPENT A YEAR IN CHICAGO ON KRAFT GENERAL FOODS. I SPENT A YEAR AT ATARI.

AND I ALSO WORKED FOR AN AD AGENCY FOR A YEAR, WHERE THEY HAD THE CLIENTS SUCH AS CAMPBELL SOUP, AND OTHER COMPANIES SUCH AS THAT.

Q. HOW DOES THE ORGANIZATION OF PHILIP MORRIS' MARKETING DEPARTMENT COMPARE AND CONTRAST TO MARKETING DEPARTMENTS IN OTHER FIELDS OR FOR OTHER PRODUCTS WITH WHICH YOU ARE FAMILIAR?

A. I WOULD SAY IT'S A MIRROR IMAGE. IT'S TOTALLY SIMILAR.

Q. HOW MANY EMPLOYEES ARE THERE ASSIGNED TO THE MARKETING DEPARTMENT?

A. I GUESS, PROBABLY -- COUNTING THE SALES DEPARTMENT, PROBABLY ABOUT 3,500 PEOPLE.

Q. AND HOW MANY OF THEM ARE PHYSICALLY LOCATED, I GUESS -- WHERE IS THE MAIN -- WHERE IS THE MARKETING DEPARTMENT? IS THERE A DOOR SOMEWHERE THAT SAYS "MARKETING DEPARTMENT"?

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A. NO. THERE IS A FLOOR, A COUPLE OF FLOORS. IT'S IN NEW YORK AT 120 PARK AVENUE.

Q. HOW MANY PEOPLE ARE THERE IN NEW YORK IN THE MARKETING DEPARTMENT?

A. OH, MAYBE ABOUT 400.

Q. WHAT DO THE REMAINING MAJORITY OF THOSE PEOPLE DO WHO ARE ASSIGNED TO THE MARKETING DEPARTMENT?

A. THE BALANCE WOULD BE FIELD SALESPEOPLE, WHO ARE OUT IN THE UNITED STATES IN SALES TERRITORIES.

Q. NOW, BY NOVEMBER OF -- WELL, STRIKE THAT.

WHEN DID YOU BECOME PRESIDENT OF THE COMPANY?

A. IN DECEMBER OF 1994.

Q. AND AS PRESIDENT, WERE YOUR RESPONSIBILITIES AND YOUR JOB DESCRIPTIONS A LITTLE BROADER THAN THEY HAD BEEN AS DIRECTOR OF MARKETING?

A. THEY WERE A LOT BROADER.

Q. CAN YOU GENERALLY DESCRIBE YOUR RESPONSIBILITIES AS PRESIDENT COMPARED TO YOUR RESPONSIBILITIES AS DIRECTOR OF MARKETING?

A. WELL, I HAD THE MARKETING DIRECTOR NOW REPORTING TO ME WHO REPLACED ME. AND I ALSO WOULD HAVE PICKED UP THE CORPORATE RELATIONS FUNCTION, THE FINANCE DEPARTMENT, HUMAN RESOURCES DEPARTMENT, MANUFACTURING, RESEARCH AND DEVELOPMENT, CORPORATE, AND ALSO THE PLANNING DEPARTMENT.

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Q. AND FOR EACH OF THOSE DEPARTMENTS, IS THERE SOMEBODY, AS YOU WERE WHEN YOU WERE DIRECTOR OF MARKETING, WHO IS RESPONSIBLE FOR THOSE DEPARTMENTS?
A. YES, THERE IS.

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Q. MR. MORGAN, THROUGHOUT THE TIME YOU'VE BEEN INVOLVED IN MARKETING, AND SPECIFICALLY MARKETING OF CIGARETTES, HAVE YOU BEEN INVOLVED WITH OR HAD OCCASION TO BECOME INVOLVED WITH ANY GOVERNMENT AGENCIES OR GOVERNMENT ORGANIZATIONS THAT WERE INVOLVED IN THE MARKETING OF CIGARETTES?
A. YES.
Q. CAN YOU DESCRIBE THAT FOR US.
A. WELL, IN -- LET'S SEE. IN -- I THINK THIS IS THE RIGHT TIME FRAME. 1967 OR 1968, I WAS APPOINTED BY PHILIP MORRIS TO BE ON A TASK FORCE WHICH MET WITH THE FEDERAL TRADE COMMISSION TO ESTABLISH THE GUIDELINES FOR THE IMPLEMENTATION OF HEALTH WARNINGS THAT ARE IN CIGARETTE ADS.
SO I SPENT A LOT OF TIME IN WASHINGTON THAT YEAR WITH THE MEMBERS OF THE FEDERAL TRADE COMMISSION, DEVELOPING THE RULES AND REGULATIONS FOR THE HEALTH WARNINGS ON CIGARETTE ADVERTISING.
MS. CHABER: YOUR HONOR, I THINK THAT THIS AREA OR TOPIC HAS BEEN OBJECTED TO BY DEFENSE COUNSEL, AND I WOULD OBJECT TO GOING INTO IT IN ANY -- I DON'T KNOW IF THIS IS JUST FOUNDATIONAL.
MR. OHLEMEYER: I HAVE NO INTENTION OF GOING ANY FURTHER WITH THAT, YOUR HONOR.
THE COURT: ALL RIGHT.
MS. CHABER: OKAY.
THE COURT: I TAKE IT THERE IS NO OBJECTION TO WHAT'S OCCURRED SO FAR, BASED ON HIS REPRESENTATION?
MS. CHABER: IF THAT'S AS FAR AS IT GOES, YES.

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THE COURT: OKAY. THAT IS WHAT HE SAID.
MR. OHLEMEYER: Q. MR. MORGAN, ARE YOU FAMILIAR WITH SOMETHING KNOWN AS THE ADVERTISING CODES OR THE VOLUNTARY ADVERTISING CODE?
A. YES.
Q. WHAT IS THAT?
A. THAT IS AN AGREEMENT AMONG THE COMPANIES, THE CIGARETTE COMPANIES, TO ADHERE TO CERTAIN PRINCIPLES IN THE MARKETING OF CIGARETTES IN THE U.S.
Q. INCLUDING THEIR ADVERTISING?
A. IT INCLUDES ADVERTISING, SALES PROMOTION, SAMPLING, AND SOME SALES FORCE PROCEDURES.
Q. LET'S TALK THEN ABOUT GENERAL MARKETING AND ADVERTISING PRINCIPLES AND STRATEGIES AND PRACTICES AT PHILIP MORRIS.
ARE THERE CERTAIN BASIC PRINCIPLES THAT YOU'VE BEEN FAMILIAR WITH OR DEVELOPED OR BEEN INVOLVED WITH OVER THESE YEARS THAT RELATE TO MARKETING A CONSUMER PRODUCT LIKE CIGARETTES?
A. SURE.
Q. CAN YOU DESCRIBE GENERALLY WHAT THE BASIC PRINCIPLE OR STRATEGY IS THAT DETERMINED HOW YOU DEVELOPED OR IMPLEMENTED MARKETING PROGRAMS FOR CIGARETTES?
A. WELL, THERE ARE MANY, MANY. I'M TRYING TO SORT OF CULL THEM DOWN TO WHAT THE CRITICAL ONES WOULD BE.
WHEN I JOINED PHILIP MORRIS, I THINK THE COMPANY HAD AN 8 PERCENT SHARE OF THE U.S. CIGARETTE MARKET, AND I JUST READ YESTERDAY THAT IT'S NOW UP TO 52. SO IT'S BEEN A

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PRETTY GOOD 35 YEARS.

I WOULD SAY THAT THE TWO GUIDING PRINCIPLES THAT PHILIP MORRIS MARKETING USED AND THAT I WAS PART OF WOULD BE TWO STRATEGIES. ONE IS -- AND THIS IS DEBATABLE IN MARKETING CIRCLES, BECAUSE THERE ARE OTHER COMPANIES WHO DON'T DO THIS IN AMERICAN INDUSTRY. THE FIRST ONE WOULD BE TO SPEND YOUR MONEY WHERE YOU'RE STRONG. DON'T CHASE WHERE YOU'RE WEAK. SPEND YOUR MONEY WHERE YOU'RE STRONG.

THERE IS A PRINCIPLE BEHIND THAT, WHICH IS, IF YOU HAVE A 10 PERCENT MARKET SHARE IN THIS MARKET AND A 1 PERCENT MARKET SHARE IN THIS MARKET (INDICATING), IF YOU GROW ONE MORE SHARE POINT OF INDUSTRY IN THIS MARKET, IT ONLY REPRESENTS A 10 PERCENT GROWTH THAT YOU HAVE, WHEREAS IN THIS MARKET, YOU HAVE TO DOUBLE YOUR BUSINESS, GO FROM ONE TO TWO PERCENT.

SO IT'S EASIER TO GROW WHERE YOU ALREADY HAVE 10 THAN WHERE YOU HAVE ONE. FOR WHATEVER REASONS, IF YOU HAD 10 AND ONE, IT'S EASIER TO GROW YOUR BUSINESS WHERE YOU HAVE 10.

AND OVER THE LAST 35 YEARS, PHILIP MORRIS HAS VERY CONSISTENTLY AND SERIOUSLY SPENT WHERE IT'S STRONG AS OPPOSED TO USING ITS MARKETING RESOURCES TO TRY AND SHORE UP WHERE IT'S WEAK. THAT HAS DIFFERENTIATED IT FROM SOME OF THE OTHER COMPANIES IN THE CIGARETTE BUSINESS.

THE SECOND THING THAT'S REASONABLY WELL WRITTEN ABOUT PHILIP MORRIS -- AND WHICH I'M PRETTY PROUD OF BEING A PART OF OVER THE YEARS -- IS THAT PHILIP MORRIS BELIEVES IN CONSISTENCY IN MARKETING.

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Q. WHAT DO YOU MEAN BY THAT?

A. WHAT I MEAN BY THAT IS THAT TODAY'S MARLBORO ADVERTISING CAMPAIGN IS NOT A DROP DIFFERENT THAN IT WAS IN 1963 WHEN MARLBORO COUNTRY WAS CREATED. AND VIRGINIA SLIMS ADVERTISING IS NOT FUNDAMENTALLY DIFFERENT THAN IN 1967, WHEN THAT BRAND WAS CREATED. AND THAT PARLIAMENT ADVERTISING IS NOT THAT MUCH DIFFERENT AS A BASIC PROPOSITION THAN IT WAS IN 1954.

CONSISTENCY OF THE MESSAGE THAT YOU GIVE TO THE CONSUMER: MAKE IT A SIMPLE MESSAGE AND BE CONSISTENT IN IT. A BRAND SUCCEEDS WHEN THE CONSUMER UNDERSTANDS WHAT THEY ARE AND CAN RELATE TO THEM.

IF YOU KEEP CHANGING CAMPAIGNS AND KEEP CHANGING THE NATURE OF YOUR COMMUNICATION, PEOPLE GET CONFUSED BY THAT.

AND PHILIP MORRIS HAS BEEN UNIQUELY CONSISTENT AMONG NOT ONLY CIGARETTE COMPANIES BUT BASICALLY AMONG AMERICAN MARKETERS.

COCA-COLA WOULD BE SIMILAR AND MCDONALD'S, I'D SAY, WOULD BE ON THE SAME PAR. BUT THAT CONSISTENCY HAS BEEN A CRITICAL STRATEGIC GOAL FOR PHILIP MORRIS.

SO THOSE TWO THINGS, SPEND WHERE YOU'RE STRONG AND BE CONSISTENT WOULD BE THE TWO OVERARCHING PRINCIPLES OF PHILIP MORRIS MARKETING OVER THE LAST 35 YEARS.

Q. I TAKE IT YOU WOULD DESCRIBE THE CIGARETTE MARKET AS BEING A COMPETITIVE MARKET?

A. OH, I THINK IT'S FIERCELY COMPETITIVE.

Q. COMPARED AND CONTRASTED TO OTHER PRODUCTS OR

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BUSINESSES WITH WHICH YOU'VE BEEN INVOLVED, IS IT A COMPETITIVE MARKET?

A. IT'S VERY COMPETITIVE.

Q. WHAT IS IT YOU'RE COMPETING FOR?

A. YOU ARE COMPETING FOR MARKET SHARE. IT'S AN

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INDUSTRY THAT AT BEST IS FLAT OVER A LONG-TERM PERIOD, AND FOR MANY YEARS HAS DECLINED. AND THE WAY YOU GROW IS BY INCREASING YOUR SHARE OF WHAT IS A SMALLER MARKET.

Q. LET ME STOP YOU THERE. YOU SAID "FLAT." WHAT DO YOU MEAN BY "FLAT"?

A. THAT THE INDUSTRY HAS NOT GROWN. THE INDUSTRY STOPPED GROWING, AS I RECALL, IN ABOUT 1983, AND JUST LEVELED OFF ITS GROWTH. AND THE INDUSTRY STARTED GETTING SMALLER FROM 1983 ON.

Q. SO WHEN YOU SAY YOU'RE "COMPETING FOR MARKET SHARE," WHAT DO YOU MEAN BY THAT?

A. WHAT I MEAN IS MARKET SHARE IS THE PERCENTAGE OF ALL CIGARETTES SOLD THAT YOU SELL. YOUR MARKET SHARE IS -- IF YOU HAVE A 35 PERCENT MARKET SHARE, IT MEANS 35 OUT OF EVERY 100 CIGARETTES SOLD IN THE UNITED STATES ARE YOUR BRAND.

YOU CAN HAVE A SHARE OF THE TOTAL MARKET. YOU CAN HAVE A SHARE IN SAN FRANCISCO, AND A SHARE IN NEW YORK. YOU CAN HAVE A SHARE AMONG WOMEN AND A SHARE AMONG MEN. BUT YOU MEASURE PERFORMANCE BASED ON MARKET SHARE.

Q. AND HOW IS IT OR HOW DOES -- STRIKE THAT. HOW DO YOU USE MARKETING OR ADVERTISING TO OBTAIN OR RETAIN MARKET SHARE?

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A. WELL, YOU USE IT TWO WAYS. ONE IS YOU USE ADVERTISING AND MARKETING TO RETAIN THE CURRENT SMOKERS YOU HAVE. A BIG PORTION -- TO ME, THE MAJORITY OF YOUR MARKETING BUDGET IS SPENT TO MAINTAIN THE CURRENT SMOKERS YOU HAVE, THE FRANCHISE.

THEN, PART OF THE MARKETING BUDGET IS SPENT TO ATTRACT SMOKERS OF A COMPETITIVE BRAND TO YOUR BRAND.

Q. AND WHAT ABOUT USING MARKETING OR ADVERTISING TO ATTRACT PEOPLE WHO AREN'T SMOKING OR PERSUADE THEM TO BECOME SMOKERS?

A. I DO NOT BELIEVE IN THE SLIGHTEST THAT CIGARETTE MARKETING OR ADVERTISING DOES OR COULD DO THAT. IF YOU LOOK AT CIGARETTE MARKETING, IT TALKS IN SMOKERS' TALK. "COME TO WHERE THE FLAVOR IS. COME TO MARLBORO COUNTRY" IS TALKING ABOUT TASTE TO PEOPLE WHO ALREADY KNOW WHAT A CIGARETTE TASTES LIKE. IT'S JUST CIGARETTE MARKETING. IT DOES NOT APPEAL TO NONSMOKERS.

Q. THROUGHOUT THE TIME THAT YOU WERE INVOLVED IN MARKETING OR ADVERTISING AT PHILIP MORRIS, WERE YOU EVER INVOLVED IN THE DEVELOPMENT OR THE EXECUTION OR THE IMPLEMENTATION OF ANY MARKETING OR ADVERTISING PLANS THAT WERE DESIGNED TO ENCOURAGE PEOPLE WHO DIDN'T SMOKE TO BECOME SMOKERS?

A. NEVER.

Q. THROUGHOUT THE TIME THAT YOU WERE AT PHILIP MORRIS, WERE YOU INVOLVED IN DEVELOPING MARKETING AND ADVERTISING PLANS THAT ATTEMPTED TO PERSUADE PEOPLE WHO WERE SMOKING OTHER BRANDS OF CIGARETTES TO SMOKE YOUR BRAND?

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A. ALWAYS.

Q. AND HOW SUCCESSFUL WERE THOSE EFFORTS?

A. PRETTY SUCCESSFUL. AS I SAID, PHILIP MORRIS GREW FROM AN 8 PERCENT SHARE OF THE U.S. CIGARETTE MARKET TO WHAT WAS REPORTED YESTERDAY AS 52 PERCENT.

Q. IS THAT SUCCESS, IN YOUR EXPERIENCE, THROUGHOUT THESE YEARS BECAUSE PHILIP MORRIS' ADVERTISING WAS BETTER THAN OTHER PEOPLE'S ADVERTISING?

A. I'D LIKE TO THINK PHILIP MORRIS' ADVERTISING WAS BETTER, BUT I DON'T THINK THAT'S THE MAIN REASON. I THINK

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THE MAIN REASON IS THAT PHILIP MORRIS MAKES EXTRAORDINARILY HIGH-QUALITY CIGARETTES, AND IN TESTS OF OUR CIGARETTES, BLIND TASTE TESTS, PHILIP MORRIS CIGARETTES ARE JUDGED TO BE SUPERIOR TO THE COMPETITION.

I DON'T THINK ADVERTISING AND MARKETING ALONE CAN SUSTAIN PEOPLE USING A PRODUCT. THE PRODUCT HAS TO BE SATISFACTORY TO THEM ALSO.

Q. ARE YOU FAMILIAR WITH A PHRASE OR TERMED CALLED "BRAND EQUITY"?

A. YES, I AM.

Q. WHAT DOES "BRAND EQUITY" MEAN AS IT RELATES TO THE MARKETING THAT YOU'VE BEEN INVOLVED WITH OVER THE YEARS?

A. WELL, "BRAND EQUITY" IS A SORT OF A BUZZ PHRASE IN THE MARKETING COMMUNITY. IT'S QUITE DIFFICULT TO EXPLAIN, BUT I'LL TRY IT.

BRAND EQUITY IS THE VALUE THAT A CONSUMER PUTS INTO A BRAND. SO IF YOU ARE A MARLBORO SMOKER OR A COCA-COLA DRINKER OR A MCDONALD'S BUYER OR YOU GO TO THE

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SUPERMARKET AND YOU ARE FACED WITH A DECISION ON WHAT TOMATO SOUP TO BUY AND THERE MAY BE FOUR DIFFERENT TOMATO SOUPS. THEY ARE SURELY CAMPBELL, THEY'S KNORR --

Q. YOU GOING TO HAVE TO SLOW DOWN.

A. THERE ARE FOUR BRANDS. THERE'S CAMPBELL -- THERE MAY BE TWO OTHER BRANDS, KNORR'S OR SOME OTHER BRAND. WHEN YOU WALK UP TO THAT AISLE AND YOU GO FOR THAT CAN OF TOMATO SOUP, YOU ARE MAKING A DECISION. YOU ARE MAKING A DECISION BASED ON YOUR PERCEPTIONS OF WHAT'S IN THAT CAN OF TOMATO SOUP, WHO IS THE MANUFACTURER AND HOW YOU FEEL ABOUT THEM, WHAT'S IN THAT CAN, HOW IT TASTES.

IF YOU HAVE HAD EXPERIENCE WITH IT BEFORE, IS IT THE RIGHT THICKNESS, THE RIGHT COLOR, THE RIGHT SPICINESS? AND THEN THAT'S ALL FACTORED BY THE PRICE THEY'RE ASKING YOU TO PAY FOR IT.

THE RELATIONSHIP BETWEEN THOSE ISSUES IS WHAT BRAND EQUITY IS ABOUT. AND THE LARGER THE BRAND EQUITY, THE LARGER VALUE THAT THE CONSUMER PLACES ON THAT BRAND, THE MORE SUCCESSFUL THAT BRAND WILL BE.

Q. WHAT ROLE DOES MARKETING OR ADVERTISING -- DOES MARKETING OR ADVERTISING PLAY A ROLE IN CREATING BRAND EQUITY?

A. YES, IT DOES.

Q. IS IT THE ONLY THING THAT CREATES BRAND EQUITY?

A. NO. THE EXPERIENCE WITH THE PRODUCT IS EVEN PROBABLY MORE IMPORTANT IN CREATING BRAND EQUITY.

PHILIP MORRIS, FOR EXAMPLE, SPENDS ENORMOUS SUMS OF MONEY TO MAKE SURE THAT THE TEAR TAPE ON THE PACK IS

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ALWAYS STRAIGHT AND ALWAYS IN THE SAME POSITION, THAT WHEN -- IF IT'S A FLIP-TOP BOX AND YOU OPEN THE BOX, THAT IT OPENS WITHOUT SNAGGING. THAT THE CIGARETTES ARE LINED UP, THAT THE FOIL IS LINED UP, THAT THE CIGARETTES INSIDE THE PACK DON'T HAVE STEM HOLES IN THEM, AND THAT IF THERE IS SOMETHING PRINTED, THE NAME IS PRINTED ON THEM, IT'S PRINTED CLEARLY.

QUALITY CONTROL AT PHILIP MORRIS IS AN EXTRAORDINARILY IMPORTANT THING. AND I BELIEVE THAT THE CONSISTENCY, AS I TALKED ABOUT, CONSISTENCY IN MARKETING, THAT THE CONSISTENT DELIVERY OF A FINE QUALITY PRODUCT IS AS IMPORTANT AND PROBABLY MORE IMPORTANT IN THE CONTEXT OF BRAND EQUITY.

PEOPLE WILL NOT PAY FOR SOMETHING THAT THEY DON'T LIKE AND IT'S NOT RELIABLE TO THEM.

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Q. HAS THAT BEEN YOUR EXPERIENCE THROUGHOUT THE TIME YOU HAVE BEEN INVOLVED IN THIS BUSINESS?
A. YES, IT'S BEEN MY EXPERIENCE.
Q. CAN YOU THINK OF ANYTHING OR ANY PRODUCTS, EITHER THAT YOU WERE INVOLVED IN THE MARKETING OF OR THAT YOU'RE FAMILIAR WITH WHERE THE MARKETING COULDN'T OVERCOME THE LACK OF CONSISTENCY OR BRAND EQUITY AS YOU'VE DESCRIBED IT? DOES THAT MAKE SENSE?
A. NO. I KNOW WHAT YOU MEAN, BUT THE QUESTION DOESN'T MAKE SENSE.
Q. I THINK, IF I UNDERSTAND WHAT YOU ARE SAYING, IT IS GOOD ADVERTISING CAN'T MAKE PEOPLE BUY A PRODUCT THEY DON'T LIKE?

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A. IT CAN THE FIRST TIME, MAYBE.
Q. WHAT KEEPS THEM BUYING IT THE SECOND, THE THIRD, THE FOURTH TIME?
A. A COMBINATION OF THEIR SATISFACTION AND EXPERIENCE WITH THE PRODUCT, COUPLED WITH THE CONTINUAL PRESENTATION OF A MARKETING PROGRAM AND AN ADVERTISING PROGRAM THAT THEY'RE COMFORTABLE WITH.
Q. I TAKE IT THERE'S SOME PLANNING AND STRATEGIZING THAT GOES INTO ALL THIS?
A. THERE IS A LOT. I CERTAINLY DON'T WANT TO GIVE THE IMPRESSION THAT IT'S ALWAYS SUCCESSFUL. I HAVE HAD MORE THAN MY SHARE OF FAILURES IN TRYING TO CREATE NEW BRANDS.
Q. AND WHAT IS IT THAT CONTRIBUTES TO THE SUCCESS OR THE FAILURE OF AN ATTEMPT TO CREATE A NEW BRAND?
A. BRINGING ALL THE RIGHT ELEMENTS TOGETHER AT THE RIGHT TIME AND MEETING A CONSUMER DESIRE.
I DO NOT BELIEVE, BY AND LARGE, THAT YOU CAN -- AS A MANUFACTURER, THAT YOU CAN FABRICATE DESIRE ON THE PART OF CONSUMERS. THERE ARE -- THERE'S SOME EXAMPLES OF PEOPLE WHO HAVE DONE IT, BUT I THINK THE LAW OF AVERAGES IS VERY STRONG THAT SUCCESSFUL MARKETING AND PRODUCT INTRODUCTIONS MEET AN EXISTING CONSUMER DESIRE.
Q. IN CONNECTION -- I WILL TALK GENERALLY FIRST AND THEN WE CAN TALK ABOUT MARLBORO SPECIFICALLY. IN CONNECTION WITH THE MARKETING AND ADVERTISING OF CIGARETTES, ARE THERE SPECIFIC PLANS OR PROGRAMS THAT YOU PUT TOGETHER TO DIRECT OR TO ORGANIZE THAT?
A. YES. THERE'S A -- FOR EACH BRAND, THERE IS AN

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ANNUAL MARKETING PLAN, WHICH IS A DOCUMENT WHICH IS FAIRLY LARGE, VERY DETAILED, AND OUTLINES -- TRADITIONALLY, IT OUTLINES -- THERE'S A SORT OF SITUATION, WHICH IS, LET'S SAY THE 1999 MARKETING PLAN OR BRAND PLAN WOULD HAVE -- IN THE BEGINNING, IT WOULD OUTLINE IN A SEGMENT OF WHERE THE BRAND IS GOING INTO 1999, WHAT ITS STRENGTHS OR WHAT ITS WEAKNESSES ARE, WHAT ITS OPPORTUNITIES ARE, WHAT ITS THREATS ARE.
AND OUT OF THAT ANALYSIS WOULD COME A RECOMMENDED COURSE OF ACTION THAT WOULD INCLUDE HOW MUCH MONEY TO SPEND ON THE BRAND, WHAT TO DO ABOUT ADVERTISING, WHAT TO DO ABOUT SALES PROMOTION, WHAT TO DO ABOUT DISTRIBUTION, WHAT TO DO ABOUT PACKAGING.
PACKAGING IN THE CIGARETTE INDUSTRY IS VERY IMPORTANT.
Q. AND ADVERTISING IS PART OF THAT PLAN?
A. YES.
Q. AND HOW LARGE OR HOW DETAILED IS THAT PLAN?
A. WELL, DEPENDING ON THE BRAND, IT CAN BE VERY DETAILED. IT IS -- I WOULD CALL IT A COMPREHENSIVE DOCUMENT

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THAT IS THE BASIS FOR WHAT HAPPENS IN THE NEXT YEAR.
AND IF YOU READ THAT BRAND PLAN GOING INTO THE YEAR, AND YOU'RE AT THE 95 PERCENT LEVEL, YOU WOULD BE DEMONSTRATING -- YOU WOULD BE READING WHAT'S GOING TO HAPPEN FOR THE NEXT 12 MONTHS.
THOSE PLANS DON'T CHANGE THAT MUCH IN THE MARKETPLACE.
Q. AND WITH RESPECT TO MARLBORO, WERE YOU INVOLVED

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IN THE PREPARATION OF SUCH PLANS OVER THE YEARS YOU WORKED AT PHILIP MORRIS?
A. I WOULD HAVE BEEN INVOLVED WITH EITHER THE PREPARATION, WRITING OR THE REVIEWING AND APPROVING OF THOSE PLANS FROM, BASICALLY, 1969 TILL 1997.
Q. HOW MANY PEOPLE ARE INVOLVED IN CREATING THAT PLAN?
A. FOR A BRAND?
Q. FOR A BRAND.
A. WELL, MARLBORO IS THE BIGGEST BRAND, SO I'M GOING TO SAY THERE MAY BE 30 OR 40 PEOPLE.
Q. THEN IT ALL GETS PUT TOGETHER IN A BOOK OR IN A PAPER?
A. IN A BOOK.
Q. AND WHO RECEIVES IT?
A. THE MANAGEMENT OF THE COMPANY RECEIVES IT.
Q. AND THEN, WHAT USE IS MADE OF IT THROUGHOUT THE YEAR IN THE MARKETING OR ADVERTISING OF THE BRAND?
A. WELL, IT REFLECTS THE STRATEGIC PLANS AND THE ACTION PLANS THAT ARE INTENDED FOR THE YEAR. SO IT IS, IF YOU WILL, THE GUIDELINE TO THE YEAR.
IT ALSO, QUITE INSIDIOUSLY, IS USED AS A BASIS FOR COMPENSATION FOR THE PEOPLE WHO WROTE IT. SO THERE'S SOME INTERESTING INTERACTIONS THAT GO ON IN TERMS OF HOW AGGRESSIVE THEY ARE, IN TERMS OF WHAT THEY SAY, WHAT THEY SAY THEY ARE ACHIEVING FOR THE YEAR, BECAUSE, OF COURSE, THEY WANT TO PROPOSE AN ACHIEVABLE NUMBER SO THAT THEY CAN EXCEED IT AND BE HIGHLY RATED IN THEIR PERFORMANCE.

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Q. THEY GRADE YOU ON YOUR OWN PLAN?
A. THEY GRADE YOU ON YOUR OWN PLAN. THERE ARE ENOUGH BOSSES AROUND THAT HAVE WRITTEN THOSE PLANS SO THAT THE GAME IS UNDERSTOOD.
Q. HAVE YOU REVIEWED A FAIR NUMBER OR REPRESENTATIVE NUMBER OF THOSE PLANS WITH RESPECT TO MARLBORO THAT MIGHT HAVE BEEN CREATED BETWEEN 1963 AND 1997?
A. I GUESS I WOULD HAVE REVIEWED EVERYTHING FROM 1969 TILL 1997, EXCEPT FOR THE FIVE YEARS I WASN'T IN THE COMPANY.
Q. CAN YOU RECALL ANY YEAR WHERE PART OF A PLAN FOR MARLBORO WAS TO DEVELOP MARKETING OR ADVERTISING PROGRAMS TO ENCOURAGE PEOPLE WHO DID NOT SMOKE TO START SMOKING?
A. NO. I THINK I SAID I HAD NEVER AT ANY TIME IN MY CAREER SEEN ANYTHING LIKE THAT.
Q. CAN YOU RECALL ANY PART OF THE PLAN FOR ANY OF THOSE YEARS WITH RESPECT TO MARLBORO OR ANY BRAND OF CIGARETTES PROPOSING TO USE MARKETING OR ADVERTISING TO GET PEOPLE WHO WERE UNDERAGE TO BUY AND SMOKE CIGARETTES?
A. NO, I'VE NEVER SEEN IT BECAUSE THEY JUST DON'T EXIST.
Q. LET'S TALK A LITTLE BIT SPECIFICALLY ABOUT MARLBORO, THE BRAND OF CIGARETTES KNOWN AS MARLBORO.
A. YES, SIR.
Q. CAN YOU DESCRIBE WHAT I GUESS, FOR LACK OF A

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BETTER WORD, IS THE HISTORY OF THE BRAND AS IT RELATES TO THE WORK YOU DID AT PHILIP MORRIS.

A. I CAN. MAY I GO BACK TO ONE EVENT PRIOR TO WHEN

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I JOINED PHILIP MORRIS THAT IS FACTUAL?

Q. SURE.

A. OKAY. THE HISTORY OF MARLBORO CAN REALLY BE TOLD IN FIVE STORIES, THAT ARE THE MAIN STORIES.

IN 1954, WHICH IS THE STORY 1, WHICH IS BEFORE I WAS THERE --

MS. CHABER: YOUR HONOR, COULD WE JUST LAY SOME FOUNDATION FOR THIS?

THE COURT: SURE.

MR. OHLEMEYER: SURE.

Q. AS PART OF YOUR JOBS AT PHILIP MORRIS, AND SPECIFICALLY YOUR WORK AS A BRAND MANAGER WITH RESPECT TO MARLBORO, DID YOU HAVE TO FAMILIARIZE YOURSELF WITH THE HISTORY OF THE BRAND?

A. YES, I DID.

Q. AND DID YOU DO THAT FROM A VARIETY OF SOURCES OF INFORMATION?

A. YES, I DID.

Q. AND DID YOU USE THAT INFORMATION IN THE WORK YOU DID WHILE YOU WERE AT PHILIP MORRIS?

A. YES, I DID.

Q. ALL RIGHT. I THINK YOU CAN EXPLAIN FOR US -- CONTINUE, I THINK -- I DON'T REMEMBER WHAT THE QUESTION WAS.

A. I DO.

Q. BUT THE QUESTION WAS, YOU ARE GOING TO --

THE COURT: STORY 1 IN 1954.

MR. OHLEMEYER: Q. THAT'S RIGHT.

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A. RIGHT. IN 1954, MARLBORO WAS REPOSITIONED FROM BEING A WOMEN'S CIGARETTE TO A MAN'S CIGARETTE. FROM THE EARLY 1900'S UNTIL 1954, MARLBORO WAS ACTUALLY A LADIES' CIGARETTE. IT CAME IN TWO VERSIONS, AND IT HAD WHAT WAS CALLED AN IVORY TIP, WHICH WAS A PLAIN TIP, AND A BEAUTY TIP, WHICH WAS A RED TIP IN THE THEORY THAT WOMEN SMOKED AND HAD RED LIPSTICK AND IT DIDN'T SHOW ON THE CIGARETTE.

THE BRAND WAS VERY SMALL. IT WAS VERY UNSUCCESSFUL, BUT IT WAS A HISTORIC BRAND.

IN 1954, THE DECISION WAS MADE TO REPOSITION THE BRAND AND CHANGE IT FROM A NONFILTER TO A FILTER CIGARETTE. THE PREVIOUS BRAND HAD BEEN NONFILTERED. IT HAD BEEN A UNFILTERED CIGARETTE. IT GOT A CORK TIP, A CORKLIKE PAPER ON IT, AND IT WAS PUT IN THE FLIP-TOP BOX, WHICH WAS THE FIRST TIME A FLIP-TOP BOX HAD EVER BEEN USED. IT WAS A NEW PACKAGING DEVELOPMENT.

SO IN 1954, OVERNIGHT, THE BRAND WENT FROM BEING A SMALL CIGARETTE MARKETED TO WOMEN TO BASICALLY A MAN'S CIGARETTE IN A NEW KIND OF PACK WITH A RED ROOF, SORT OF THE FAMOUS RED ROOF DESIGN.

AND THE SUCCESS WAS REALLY RAPID. PEOPLE WHO WERE THERE THEN, I REMEMBER, TELL THE SORRY OF THE BRAND GOING FROM NOTHING TO LIKE A 10 PERCENT MARKET SHARE IN NEW YORK IN A MATTER OF WEEKS. IT WAS AN INCREDIBLE SUCCESS.

Q. LET ME STOP YOU. YOU SAID -- YOU DESCRIBED IT AS BEING POSITIONED.

WHAT DO YOU MEAN BY "POSITIONED"?

A. WELL, THE ADVERTISING, FIRST OF ALL, PUTTING A

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CORK TIP ON A FILTER CIGARETTE, SUGGESTED THAT IT HAD

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FLAVOR. PEOPLE UNDERSTOOD THAT A CIGARETTE THAT WAS ALL WHITE WAS GENERALLY PERCEIVED BY PEOPLE AS BEING MILDER THAN A CIGARETTE WITH A CORK TIP. THAT HOLDS THROUGH TODAY. I MEAN, THAT'S JUST ONE OF THE GRAPHIC SORT OF TELEGRAPHS OF A CIGARETTE.

SO IT WAS -- A CORK TIP WAS PUT ON IT. IT WAS REBLENDED TO BE A GOOD-TASTING, FULL-FLAVOR CIGARETTE. IT WENT -- AND THEY PUT A RED CHEVRON ON THE PACK, RED BEING A COLOR, A FLAVOR COLOR.

AND SO IT WENT FROM BEING A SORT OF SPECIALTY BRAND THAT USED TO SAY -- I THINK "MILD AS MAY" WAS ITS ADVERTISING SLOGAN BACK IN 1917. IT BECAME A FLAVOR BRAND, AND THEREFORE A MAN'S BRAND, BECAUSE IN THE 1950S, MEN SMOKED FLAVOR CIGARETTES. WOMAN SMOKED LESS FLAVOR CIGARETTES.

SO THE WHOLE TOTALITY OF THE RESTAGING WAS DESIGNED TO POSITION MARLBORO AS A FULL-FLAVOR CIGARETTE BASICALLY FROM THEN, AND THE BRAND WAS A SUCCESS.

IN THE EARLY 1960S, THE BRAND STUMBLED A LITTLE. IT STOPPED GROWING. AS I REMEMBER, BACK AT THAT TIME, IT HAD ABOUT A 5 OR 6 PERCENT MARKET SHARE, MAYBE A 4 PERCENT MARKET SHARE. AND IT STARTED STUMBLING.

MARLBORO HAD RUN A BUNCH OF DIFFERENT ADVERTISING CAMPAIGNS FROM 1954 TO THE EARLY 1960S. IT HAD NOT QUITE FOUND THE ONE CAMPAIGN THAT REALLY REPRESENTED IT.

AND IN 1963, WHICH IS STORY NO. 2, MARLBORO COUNTRY WAS CREATED. MANY, MANY PEOPLE THINK MARLBORO

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COUNTRY GOES ALL THE WAY BACK TO 1954. IT DOESN'T.

THE REASON PEOPLE CONCLUDE THAT WHO ARE OLD ENOUGH TO REMEMBER IS THAT THE FIRST MARLBORO AD IN '54 WAS A COWBOY WITH A TATTOO, AND THE FACT THAT IT WAS A COWBOY.

AND THEN IN '63, MARLBORO COUNTRY WAS DEVELOPED.

Q. YES. WHEN YOU SAY "MARLBORO COUNTRY," WHAT DO YOU MEAN BY THAT?

A. WELL, "MARLBORO COUNTRY," BY THAT, I MEAN, VERY SIMPLY, WHAT YOU SEE TODAY. "COME TO WHERE THE FLAVOR IS. COME TO MARLBORO COUNTRY." THE AMERICAN WEST, THE COWBOY.

Q. THE THEME OF THE ADVERTISING?

A. THAT WAS THE THEME OF THE ADVERTISING. AND THAT HAPPENED IN 1963.

AND TO ME, THAT MARKED THE BEGINNING OF MARLBORO'S LONG CLIMB TO THE NO. 1 POSITION IN THE AMERICAN CIGARETTE MARKET. AND THE REASON IS --

MS. CHABER: YOUR HONOR, COULD WE PROCEED BY QUESTION AND ANSWER RATHER THAN LONG NARRATIVES?

MR. OHLEMEYER: SURE.

THE COURT: YES.

MR. OHLEMEYER: Q. AT THAT POINT IN TIME, THERE WERE CERTAINLY WOMEN -- I ASSUME THERE WERE WOMEN BUYING AND SMOKING MARLBORO?

A. YES, BUT IT WAS PRIMARILY MEN.

Q. HOW THEN DID THE BRAND PROGRESS THROUGHOUT THE '60S?

A. THE BRAND DID VERY WELL IN THE 1960S. IT GREW SIGNIFICANTLY.

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AND THEN ON NEW YEAR'S EVE OF 1971 WAS STORY 3. IT WAS THE NEXT BIG EVENT, WHICH WAS THE BROADCAST BAN ON CIGARETTE ADVERTISING.

Q. HOW DID THAT AFFECT THE DEVELOPMENT OR THE MARKETING OF MARLBORO?

A. WELL, MARLBORO WAS ARGUABLY THE BEST TELEVISION

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ADVERTISING FOR CIGARETTES. SOME PEOPLE THOUGHT IT WAS THE BEST TELEVISION ADVERTISING FOR ANYTHING. IT HAD A MAGNIFICENT SETTING, MUSIC FROM THE MAGNIFICENT SEVEN, THE MOVIE THE MAGNIFICENT SEVEN AS ITS THEME. IT HAD ACTION. IT WAS REALLY EXCELLENT ADVERTISING.

IT WAS ALL GOING TO GO AWAY BECAUSE THERE WAS GOING TO BE A BROADCAST BAN ON JANUARY 1ST, 1972.

I WAS BRAND MANAGER ON MARLBORO, AS I POINTED OUT.

Q. I THINK YOU DESCRIBED FOR US WHAT BRAND MANAGEMENT IS.

WHAT IS THE RESPONSIBILITY OF THE BRAND MANAGER?

A. ADVERTISING AND SALES PROMOTION.

SO THIS NOW WAS MY RESPONSIBILITY, TO MANAGE THE TRANSITION OF MARLBORO FROM TELEVISION TO A NONBROADCAST WORLD.

Q. THAT'S THE THIRD PART OF THE STORY?

A. THAT IS STORY NO. 3. AND IT WAS A VERY THREATENING TIME.

I WAS RELATIVELY YOUNG AT THE POINT, AND AS FAR AS I WAS CONCERNED, I WAS SITTING THERE AND WE WERE WATCHING OUR NO. 1 ADVANTAGE DISAPPEAR.

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AND WHAT WE DID WAS, THERE WERE THREE OF US WHO SPENT THE FALL OF 1971 LITERALLY DRIVING THE HIGHWAYS OF THE UNITED STATES AND BUYING OUTDOOR ADVERTISING. CIGARETTE COMPANIES HAD NOT BEEN USING OUTDOOR ADVERTISING A LOT. AND WE FIGURED OUT STRATEGICALLY AND TACTICALLY THAT OUTDOOR ADVERTISING WOULD BE AN EFFECTIVE ADVERTISING VEHICLE FOR MARLBORO BECAUSE, UNLIKE A MAGAZINE, OUTDOOR BILLBOARDS ARE BIG, WHICH MARLBORO WAS, BIG COUNTRY, THE VISTAS, THE MOUNTAINS. IT GAVE YOU A BIG SPACE TO WORK ON. IT WAS OUTSIDE, WHICH WAS ALSO PART OF MARLBORO BEING, YOU KNOW, AN OUTDOOR BRAND.

AND WE PUT TOGETHER, IN THE FALL OF 1971 IN THREE MONTHS, WHAT BECAME THE BIGGEST AND BEST OUTDOOR PROGRAM IN THE UNITED STATES FOR ANY BRAND. AND I BELIEVE THAT THAT WAS A SIGNIFICANT ACHIEVEMENT THAT HELD MARLBORO IN GOOD STEAD ON A MARKETING BASIS FOR THE NEXT 25 YEARS.

Q. AND SO WHAT IS THE FOURTH PART OF THE HISTORY AS IT RELATES TO MARLBORO?

A. THE FOURTH PART CAME A YEAR LATER. AND IT IS THE INTRODUCTION OF MARLBORO LIGHTS. MARLBORO LIGHTS TODAY IS THE LARGEST BRAND IN THE UNITED STATES. MARLBORO IS THE LARGEST BRAND. MARLBORO LIGHTS IS THE LARGEST PART OF MARLBORO.

IT WAS AN INTERESTING BUSINESS PROBLEM. HERE IS A BRAND THAT WAS GROWING VERY QUICKLY, THAT WAS A FULL-FLAVOR BRAND, STOOD FOR FLAVOR, WAS ACCEPTED AND UNDERSTOOD BY PEOPLE TO BE A FLAVORFUL BRAND, HAD A RED PACK, HAD THIS VERY STRONG WESTERN IMAGERY.

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AND IN NEW YORK CITY -- I REMEMBER THIS VERY VIVIDLY -- IN NEW YORK CITY IN 1972, MAYOR JOHN LINDSAY PROPOSED A TAX ON CIGARETTES BASED ON TAR AND NICOTINE. IN OTHER WORDS, THE HIGHER THE TAR AND NICOTINE, THE HIGHER THE TAX WOULD BE. AND ONE OF MARLBORO'S REALLY FIERCE COMPETITORS IN NEW YORK WAS KENT, THE KENT BRAND. AND KENT HAD A LOWER TAR AND NICOTINE THAN MARLBORO.

AND WHAT WAS GOING TO HAPPEN WAS MARLBORO WAS GOING TO BE MORE EXPENSIVE BASED ON THAT TAX THAN KENT WAS. AND THE CHAIRMAN OF THE BOARD OF THE COMPANY SAID: "WE'RE NOT GOING TO LET THIS HAPPEN. WE HAVE TO INTRODUCE A

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LOW-TAR MARLBORO."

AND WE DEBATED THAT AND DEBATED THAT, TRYING TO FIGURE OUT HOW TO DO IT. IF YOU BELIEVED IN CONSISTENCY AND SINGLE-MINDEDNESS AND PRESENTED THIS IMAGE AND POSITION OF A STRONG FULL-FLAVORED CIGARETTE, HOW DO YOU INTRODUCE A VERSION THAT'S LIGHTER?

WELL, WE FINALLY DID IT. AND WE PUT A WHITE TIP ON IT INSTEAD OF A CORK TIP. WE PUT IT IN A GOLD AND WHITE PACK WITH NO RED ON IT, AND INTRODUCED IT AS A LIGHTER-TASTING MARLBORO. AND THAT BRAND WAS VERY SUCCESSFUL.

Q. AT THAT POINT IN TIME, WAS THE COMPANY SELLING OTHER BRANDS OF CIGARETTES THAT HAD LOWER LEVELS OF TAR AND NICOTINE?

A. YES. OH, YES, A NUMBER OF THEM. MARLBORO LIGHTS, AS I SAID, WAS INTRODUCED. IT STARTED SLOWLY, AND TODAY IT IS THE SINGLE LARGEST PACKING OF ANY BRAND IN THE INDUSTRY.

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STORY FIVE IS WHAT'S KNOWN AS MARLBORO FRIDAY.

Q. WHAT DO YOU MEAN BY THAT?

A. IN THE LATE 1980S, DISCOUNT BRANDS STARTED GROWING, "DISCOUNT BRAND" MEANING BRANDS THAT SOLD FOR LESS THAN THE PREMIUM BRAND. THEY WERE EITHER STORE BRANDS, OR SOME MANUFACTURERS, INCLUDING PHILIP MORRIS, HAD BRANDS THAT SOLD FOR LESS THAN THE TOP BRAND. AND THOSE BRANDS HAD BEEN AROUND DURING THE 1980S, BUT REALLY ONLY STARTED GROWING IN ABOUT 1987 OR 1988. AND THEY STARTED GROWING SIGNIFICANTLY INTO A WORRISOME DEGREE.

WE'RE GOING BACK TO WHAT WE TALKED ABOUT EARLIER, BRAND EQUITY, WHERE THE BRAND EQUITY IN BRANDS LIKE MARLBORO WERE STARTING TO SHOW CRACKS IN TERMS OF BEING ABLE TO -- THE CONSUMERS WOULD PLACE THE HIGHER VALUE ON MARLBORO, THAT THEY PAY THE PRICE DIFFERENTIAL BETWEEN MARLBORO AND THE LOWER-PRICED BRAND.

THERE WAS EVIDENCE THAT MARLBORO WAS STARTING TO WEAKEN. OTHER BRANDS, COMPETITIVE BRANDS LIKE WINSTON AND SALEM AND KOOLS WERE STARTING TO WEAKEN. THE PREMIUM PRICED BRANDS WERE DEFINITELY STARTING TO WEAKEN.

PHILIP MORRIS TRIED A VARIETY OF STRATEGIES TO DEAL WITH THAT. IT MARKETED THE LOWER PRICE BRAND, IT DID THINGS TO PRICE PROMOTE THE MARLBORO TO SOME DEGREE, BUT NOBODY WAS COMFORTABLE THAT WE HAD FOUND THE LONG-TERM SOLUTION.

AND ON I BELIEVE IT WAS APRIL 13TH, 1993, APRIL 6 OR 13TH, A FRIDAY, PHILIP MORRIS ANNOUNCED THAT IT WAS PERMANENTLY REDUCING THE PRICE OF MARLBORO DOWN TO -- CLOSE

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TO THE PRICE OF THE LOWER-PRICED BRAND. IN OTHER WORDS, IT ACKNOWLEDGED THAT, RELATIVE TO THE LOWER-PRICED CIGARETTES THAT WERE AVAILABLE ON THE MARKET, THAT MARLBORO HAD TO BE PRICED MORE COMPETITIVELY. IT DID IT.

IT SENT RIPPLES THROUGH EVERYTHING, THE STOCK MARKET, THE TRADE PRESS. PEOPLE COULDN'T BELIEVE WE HAD DONE IT. MARLBORO'S MARKET SHARE AT THAT PERIOD OF TIME HAD DROPPED FROM 26 PERCENT TO 21 PERCENT AND WAS DROPPING ABOUT A SHARE POINT A YEAR. SO IT WAS DEFINITELY DECLINING.

WE DID MARLBORO FRIDAY. WE LOWERED THE PRICE ON MARLBORO 20 CENTS A PACK, AND TODAY, MARLBORO HAS A 37 SHARE OF THE U.S. CIGARETTE MARKET. SO IT WENT FROM 19 FROM THE SPRING OF 1993, FROM A 21 SHARE TO, TODAY, A 37 SHARE. IT WAS A MOMENTOUS DECISION TO MAKE.

PHILIP MORRIS COMPANY STOCK --

Q. LET ME STOP YOU THERE, MR. MORGAN.

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DOES THAT BASICALLY DESCRIBE MARLBORO FROM BEFORE YOU GOT TO THE COMPANY TO THE TIME YOU LEFT THE COMPANY?

A. YES, IT DOES.

MR. OHLEMEYER: YOUR HONOR, DO YOU WANT TO TAKE A LUNCH BREAK?

THE COURT: YES. JURORS, LET'S TAKE AN HOUR AND A HALF FOR LUNCH. PLEASE CONTINUE TO FOLLOW THE ADMONITION, AND WE'LL SEE YOU BACK AT 1:30.

(LUNCH RECESS TAKEN AT 12:00 NOON)

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AFTERNOON SESSION 1:35 P.M.

THURSDAY, JANUARY 29, 1999

(THE FOLLOWING PROCEEDINGS WERE HELD IN THE COURTROOM, IN THE PRESENCE OF THE JURY)

THE COURT: GOOD AFTERNOON, EVERYBODY. MR. OHLEMEYER.

MR. OHLEMEYER: THANK YOU, JUDGE.

CONTINUED DIRECT EXAMINATION

MR. OHLEMEYER: Q. MR. MORGAN, LET ME ASK YOU A COUPLE OF THINGS BEFORE WE MOVE ON TO ANOTHER TOPIC.

HAVE YOU HEARD THE PHRASE "TARGET" AS IT APPLIES TO ADVERTISING AND MARKETING?

A. YES.

Q. WHAT DOES THAT PHRASE MEAN TO YOU OR WHAT DO YOU UNDERSTAND IT TO MEAN?

A. WELL, WHAT IT MEANS IS THAT YOU SPEND YOUR MONEY IN A WAY THAT DISPROPORTIONATELY GOES AGAINST A SPECIFIC GROUP. IT WOULD BE A TARGET, WEST OF THE MISSISSIPPI, EAST OF THE MISSISSIPPI. YOU TARGET BIG CITIES VERSUS SMALL TOWNS. YOU COULD TARGET MEN VERSUS WOMEN.

IT'S A MARKETING PHRASE THAT INDICATES THE RELATIVE DEGREE OF EFFORT YOU ARE MAKING AGAINST SOME SUBCLASS OF THE TOTAL MARKET.

Q. IS THAT A FAIRLY STANDARD MARKETING TECHNIQUE?

A. OH, EVERYBODY DOES IT.

Q. WHEN YOU SAY "EVERYBODY," WHAT DO YOU MEAN?

A. ALL COMERS.

0035

Q. IT'S NOT SPECIFIC OR UNIQUE TO CIGARETTE ADVERTISING?

A. OH, NO. NOT AT ALL.

Q. WHAT ROLE, IF ANY, DO CONSUMERS THEMSELVES PLAY IN THE CREATION OF ADVERTISING OR MARKETING PLANS?

A. WELL, DEPENDING ON THE COMPANY AND THE PEOPLE WHO ARE CREATING THE ADVERTISING, IT COULD RANGE FROM A WHOLE HECK OF A LOT TO ALMOST NONE.

AND WHAT I MEAN BY THAT, THERE ARE SOME PEOPLE WHO USE THE CONSUMER VERY THOROUGHLY IN THE DEVELOPMENT OF ADVERTISING. THEY'LL INTERVIEW THEM ABOUT THE PRODUCT BEFORE THE ADS ARE CREATED BY THE AD AGENCY. THEY'LL MONITOR THEM AS A CAMPAIGN DEVELOPS OR THE ADVERTISING IS BEING DEVELOPED. THEY WILL SHOW IT TO THE CONSUMER AND GET THEIR REACTION WHEN IT'S FINISHED. THEY'LL SURVEY CONSUMERS BEFORE THE AD EVEN GOES INTO A MAGAZINE OR ON TELEVISION OR WHEREVER. THEY'LL ASK CONSUMERS WHAT THEY THINK ABOUT IT.

SO THE CONSUMER WOULD BE INVOLVED THROUGH RESEARCH, ALL THE WAY THROUGH THE PROCESS OF CREATING AN AD.

OTHER COMPANIES DON'T BELIEVE IN THAT TECHNIQUE

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SO MUCH AND WOULD TEND TO USE THE CONSUMER SPARINGLY IN THE DEVELOPMENT OF ADVERTISING.

Q. IN YOUR EXPERIENCE, WHAT ROLE, IF ANY, HAVE CONSUMERS PLAYED IN THE DEVELOPMENT OF YOUR ADVERTISING?

A. VERY LITTLE.

Q. LET ME RETURN TO SOMETHING BEFORE WE MOVE ON TO THE TOPIC OF UNDERAGE SMOKING. I WANT TO TALK TO YOU ABOUT

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PEOPLE ADVERTISING OR MARKETING DIRECTED TO PEOPLE WHO DON'T USE A PRODUCT OR, IN THIS CASE, DON'T ALREADY SMOKE, I GUESS.

WOULDN'T IT MAKE SENSE OR WOULD IT MAKE SENSE TO THINK THAT A COMPANY LIKE PHILIP MORRIS COULD SELL MORE CIGARETTES IF IT COULD TELL HOW TO GET PEOPLE TO START SMOKING WHO WEREN'T ALREADY SMOKING?

A. NOT NECESSARILY.

Q. WHY NOT?

A. REMEMBER, EARLIER I SAID THAT PHILIP MORRIS' CORE STRATEGY IS SPEND WHERE YOU'RE STRONG. WELL, THE SAME THEORY APPLIES, WHICH IS IT'S SUBSTANTIALLY EASIER TO GET PEOPLE TO SWITCH FROM WINSTON TO MARLBORO THROUGH ADVERTISING AND MARKETING THAN IT WOULD BE TO TRY AND PERSUADE SOMEONE TO START SMOKING.

I MEAN, PEOPLE WHO DON'T SMOKE HAVE BEEN EXPOSED TO THE HEALTH WARNINGS, THE DEBATE ON SCIENTIFIC AND HEALTH ISSUES AROUND CIGARETTES. I CAN'T PICTURE CIGARETTE ADVERTISING TRYING TO GET PEOPLE TO START SMOKING. IT JUST DOESN'T WORK THAT WAY. IT'S ALL BRAND SHARE. IT'S ALL A BATTLING FOR BRAND SHARE IN THE ALREADY EXISTING ADULT SMOKER BASE.

Q. DOES THE ABILITY TO -- DOES THE DECISION TO MARKET AND ADVERTISE IN ORDER TO MAKE PEOPLE SWITCH DEPEND, IN PART, UPON WHAT KIND OF MARKET, WHETHER YOU ARE DEALING WITH -- WHETHER IT'S A NEW MARKET, AN OLD MARKET, A MATURE MARKET, THINGS LIKE THAT?

A. I DON'T FOLLOW THE QUESTION.

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Q. DO YOU DESCRIBE THINGS IN MARKETING AND ADVERTISING AS MATURE MARKETS AS OPPOSED EMERGING MARKETS?

A. NO. I MEAN, THAT IS NOT A PHRASE THAT WOULD BE OPERATIVE IN THE CIGARETTE INDUSTRY. YOU DIVIDE THE MARKET, AS I SAID --

MS. CHABER: WELL, YOUR HONOR, I'M GOING TO OBJECT. IT'S BEYOND THE QUESTION. HE'S ANSWERED.

THE COURT: OKAY.

MR. OHLEMEYER: Q. IN YOUR EXPERIENCE AT PHILIP MORRIS, MR. MORGAN, HAVE YOU EVER PARTICIPATED IN OR RECEIVED RESULTS OF MARKET RESEARCH DIRECTED TO NONSMOKERS TO SEE WHAT KIND OF MARKETING OR ADVERTISING MIGHT APPEAL TO THEM?

A. NO, I DON'T RECALL ANY.

Q. DURING THE TIME YOU WERE AT PHILIP MORRIS, DID YOU COME TO THE CONCLUSION THAT MARKETING OR ADVERTISING CIGARETTES DID NOT INCREASE THE OVERALL DEMAND FOR CIGARETTES?

MS. CHABER: WELL, YOUR HONOR, I WOULD OBJECT TO THE LEADING NATURE OF THESE QUESTIONS.

THE COURT: SUSTAINED.

MR. OHLEMEYER: I WILL REPHRASE IT.

THE COURT: THIS ONE I'LL SUSTAIN.

MR. OHLEMEYER: Q. WHILE YOU WERE AT PHILIP MORRIS, MR. MORGAN, WERE THERE STUDIES CONDUCTED BY OTHER ORGANIZATIONS OR INDIVIDUALS THAT LOOKED AT THE QUESTION AS

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TO WHETHER CIGARETTE ADVERTISING CREATED OR ENTICED PEOPLE WHO DIDN'T SMOKE TO START SMOKING?

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A. I BELIEVE THERE WERE SEVERAL SURGEON GENERAL'S REPORTS THAT LOOKED AT THAT SUBJECT.

Q. AND THAT WAS INFORMATION THAT YOU WOULD HAVE USED OR REVIEWED AT THE TIME IN CONNECTION WITH YOUR WORK?

A. I WOULD HAVE BEEN AWARE OF IT, YES.

Q. AND WAS THERE ANYTHING REPORTED THAT WAS INCONSISTENT WITH WHAT YOU'VE TOLD US ABOUT YOUR OPINIONS WITH RESPECT TO WHY OR IF CIGARETTE ADVERTISING DOES OR DOESN'T ENTICE OR CREATE DEMAND FOR CIGARETTES FOR NONSMOKERS?

A. AS I RECALL, THE SURGEON GENERAL'S REPORTS INDICATED THAT CIGARETTE ADVERTISING AND MARKETING IS WELL DOWN ON THE LIST OF WHAT CAUSED PEOPLE TO START SMOKING, WITH PARENTAL SMOKING AND SIBLING SMOKING BEING THE PRIMARY DETERMINANT OF WHETHER SOMEONE STARTED SMOKING OR NOT.

Q. NOW, NONSMOKERS CERTAINLY SEE OR ARE EXPOSED CIGARETTE ADVERTISING?

A. NO QUESTION ABOUT THAT.

Q. AND YET, NONETHELESS, IN YOUR EXPERIENCE, THAT KIND OF ADVERTISING DOESN'T CREATE A DEMAND FOR SOMETHING IN A GROUP OF PEOPLE WHO DON'T WANT TO USE THAT PRODUCT?

A. THAT'S MY EXPERIENCE AND MY BELIEF.

Q. LET ME ASK YOU TO ASSUME THAT IT HAS BEEN SAID, OR ASSUME THAT THERE'S BEEN TESTIMONY IN THIS CASE THAT THE AMOUNT OF TIME AND EFFORT AND EVEN MONEY SPENT ON MARKETING AND ADVERTISING OF CIGARETTES IS DISPROPORTIONATE TO THE AMOUNT OF BRAND SWITCHING THAT GOES ON.

A. I HEARD THAT ARGUMENT BEFORE, AND IT'S JUST

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WRONG. THE VALUE OF A BRAND SWITCHER IS IMMENSE IN THE CIGARETTE BUSINESS.

AND AS A MARKETER, I FELT I NEVER HAD ENOUGH MONEY TO DO THE JOB THAT WE WANTED TO DO TO GET PEOPLE TO SWITCH BRANDS. THIS IS A VERY BIG BUSINESS. IT TAKES A LOT OF RESOURCES TO CAUSE BRAND-SWITCHING, AND THE VALUE OF BRAND SWITCHING IS QUITE EXTRAORDINARILY HIGH IN AN INDUSTRY THAT'S FLAT OR DECLINING.

Q. DO YOU THINK THAT ADVERTISING AND MARKETING OF CIGARETTES PREVENTS PEOPLE WHO WANT TO QUIT SMOKING FROM QUITTING?

A. NO, I DON'T.

Q. HAVE YOU DONE ANY -- OR IN YOUR EXPERIENCE, HAVE YOU DONE ANY RESEARCH OR HAS ANYBODY PRESENTED YOU WITH ANY RESEARCH CONSISTENT OR INCONSISTENT WITH THAT OPINION?

A. I HAVE NEVER SEEN ANY RESEARCH THAT INDICATED THAT.

Q. ARE YOU FAMILIAR WITH THINGS CALLED -- OR ADVERTISING OR MARKETING CALLED SPECIAL CIRCUMSTANCES MARKETING?

A. NO.

Q. ARE YOU FAMILIAR WITH ADS LIKE, YOU KNOW, THE "GOT MILK" ADS?

A. YES.

Q. THE COTTON ADS, THINGS LIKE THAT, THE BEEF ADS?

A. TRADE INDUSTRY ADS. TRADE ASSOCIATION ADS.

Q. DOES PHILIP MORRIS PARTICIPATE OR CREATE OR SPONSOR ANY KIND OF ADVERTISING OF THAT SORT?

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A. AS A TRADE ASSOCIATION?

Q. CORRECT.

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THE COURT: WHAT IS THE TIME FRAME OF YOUR QUESTION? YOU ARE PHRASING IT IN THE PRESENT TENSE.
MR. OHLEMEYER: I'M SORRY. I'M SORRY, YOUR HONOR.
Q. DURING THE TIME YOU HAVE BEEN AT PHILIP MORRIS, HAS PHILIP MORRIS SPONSORED ADS LIKE THE "GOT MILK" ADS THAT PERTAIN TO CIGARETTES OR SMOKING?
A. PHILIP MORRIS DID NOT CREATE OR RUN ADS ON BEHALF OF THE INDUSTRY. PHILIP MORRIS DID FROM TIME TO TIME RUN WHAT I CALL ISSUE ADS.
Q. AND WHAT ARE THEY?
A. WELL, LIKE PHILIP MORRIS RAN A CAMPAIGN ABOUT WHY MINORS SHOULD NOT SMOKE, BUT IT RAN AS PHILIP MORRIS, NOT AS THE TOBACCO INDUSTRY.
Q. DID PHILIP MORRIS, WHILE YOU WERE THERE, EVER RUN ADS DIRECTED TO EITHER ENCOURAGING PEOPLE TO SMOKE IN GENERAL AS OPPOSED TO PURCHASING OR USING A PHILIP MORRIS BRAND?
A. NO, NOT THAT I'M AWARE OF.
Q. LET'S TALK, MR. MORGAN, ABOUT SOMETHING THAT HAS BEEN REFERRED TO IN VARIOUS WAYS IN THE TRIAL AS UNDERAGE SMOKING OR YOUTH SMOKING AND ADVERTISING.
DO YOU HAVE ANY DOUBT THAT PEOPLE -- LET ME BACK UP.
THROUGHOUT THE TIME YOU'VE WORKED AT PHILIP MORRIS, HAVE THERE BEEN LAWS THAT RESTRICT THE SALE OF

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CIGARETTES TO PEOPLE OF CERTAIN AGES?
A. YES.
Q. AND HAS THAT BEEN SOMETHING THAT'S BEEN TRUE THROUGHOUT THE TIME YOU WORKED AT THE COMPANY?
A. YES, STATE LAWS.
Q. AND YOU HAVE NO DOUBT, THOUGH, DO YOU, THAT THERE ARE PEOPLE UNDERAGE WHO SMOKE CIGARETTES?
A. THAT'S VERY CLEAR.
Q. AND I PRESUME SOME OF THEM BUY PHILIP MORRIS PRODUCTS?
MS. CHABER: YOUR HONOR, I WOULD OBJECT TO THE CONTINUING LEADING QUESTIONS.
THE COURT: SUSTAINED.
MR. OHLEMEYER: Q. MR. MORGAN, DO YOU KNOW WHETHER -- OR CAN YOU ASSUME WHETHER THERE ARE PEOPLE UNDERAGE WHO BUY PHILIP MORRIS PRODUCTS?
A. I ASSUME THERE ARE.
Q. DO YOU ASSUME THAT THERE ARE PEOPLE UNDERAGE WHO SEE ADVERTISEMENTS FOR PHILIP MORRIS PRODUCTS?
A. THERE'S NO QUESTION ABOUT THAT.
Q. WHAT, IF ANYTHING, DURING THE TIME YOU WERE AT PHILIP MORRIS, DID YOU OR THE COMPANY DO TO TRY TO AVOID OR PREVENT PEOPLE WHO WERE UNDERAGE FROM EITHER SEEING YOUR ADVERTISING OR BUYING YOUR PRODUCTS?
A. WELL, STARTING BACK IN THE 1960S, BEFORE THERE WAS A CIGARETTE ADVERTISING CODE, THERE WAS A MARKETING PRACTICES CODE THAT CONTAINED PROVISIONS IN IT, SUCH AS SAMPLES SHOULD NOT BE DISTRIBUTED TO ANYBODY UNDER THE AGE

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OF 21.
Q. MR. MORGAN, LET ME STOP YOU FOR A MINUTE.
WHAT IS A SAMPLE, AS YOU'VE USED THE PHRASE?
A. A SAMPLE IS A PACKAGE OF FREE CIGARETTES. IT COMMONLY COMES AS A FOUR-PACK, A PACKAGE OF FOUR CIGARETTES.
ONE OF THE PROVISIONS OF THE CIGARETTE

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ADVERTISING CODE WAS THAT NO SAMPLE SHOULD BE GIVEN TO ANYBODY UNDER THE AGE OF 21.

ANOTHER PROVISION OF THE CIGARETTE ADVERTISING CODE WAS THAT CIGARETTE COMPANIES SHOULD NOT USE, IN THEIR ADVERTISING, PEOPLE IN POSITIONS OF AUTHORITY. I RAN INTO THAT ONE WHEN I WAS BRAND MANAGER ON PARLIAMENT. I WAS RUNNING A CAMPAIGN THAT WAS AN ADVERTISING CAMPAIGN THAT WAS PHOTOGRAPHED IN LONDON, ENGLAND. AND ONE OF THE COMMERCIALS IN THE BACKGROUND HAD A BOBBY, A POLICEMAN.

AND THE ADMINISTRATOR OF THE CIGARETTE ADVERTISING CODE SAID: "YOU HAVE TO TAKE THAT OUT OF THE COMMERCIAL," BECAUSE THAT WAS SHOWING SOMEONE IN UNIFORM IN A POSITION OF AUTHORITY.

ANOTHER PROVISION OF THE CIGARETTE ADVERTISING CODE WAS THAT MODELS BOTH HAD TO BE AND APPEAR TO BE OVER 25 YEARS OF AGE.

ANOTHER PROVISION OF THE CIGARETTE ADVERTISING CODE WAS THAT THE MEDIA IN WHICH YOU PUT ADS HAD TO HAVE AT LEAST, I THINK IT WAS 20 PERCENT -- COULD NOT HAVE MORE THAN 20 PERCENT OF ITS CIRCULATION UNDER THE AGE OF 21. SO THAT MEANT YOU COULDN'T ADVERTISE IN PLACES WHERE THERE WERE MORE

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THAN 20 PERCENT OF THE AUDIENCE THAT WAS OVER -- THAT WAS UNDER 21.

SO THERE WERE A WHOLE SERIES OF PROVISIONS IN THE CIGARETTE ADVERTISING CODE.

THEN THE GOVERNMENT, FEDERAL GOVERNMENT BECAME INVOLVED WITH THE ISSUE OF TAR AND NICOTINE LISTING AND HEALTH WARNINGS AND A SERIES OF RULES AND REGULATIONS.

AND THEN MORE RECENTLY, PHILIP MORRIS INTRODUCED A PROGRAM CALLED ACTION AGAINST ACCESS, WHICH WAS A VERY STRONG PROGRAM THAT WENT PRETTY FAR. AND IN FACT, THAT PROGRAM, WHICH, AS I RECALL, WAS INTRODUCED IN 1995, ACTUALLY RECOMMENDED THE ELIMINATION OF CIGARETTE VENDING MACHINES IN THE MARKETPLACE, WHICH WAS A MOVE THAT DIDN'T MAKE A LOT OF PUBLIC RELATIONS SENSE FOR US, TO TELL ONE GROUP OF OUR CUSTOMERS THAT WE THOUGHT THEY SHOULD BE OUT OF BUSINESS.

BUT THE ISSUE OF UNDERAGE PEOPLE GETTING CIGARETTES FROM VENDING MACHINES IS A SERIOUS ISSUE. AND THE STATES WHOSE LAWS IT IS TO ENFORCE CIGARETTES BEING ACCESSIBLE TO MINORS, THOSE LAWS JUST -- YOU KNOW, OBVIOUSLY WEREN'T WORKING. SO WE RECOMMENDED THAT CIGARETTE VENDING MACHINES SHOULD BE ELIMINATED.

Q. HAVE YOU EVER, WHILE YOU WERE AT PHILIP MORRIS, TAKEN ANY STEPS OR DONE ANYTHING TO MINIMIZE OR MAKE IT LESS LIKELY THAT YOUR ADVERTISING OR PROMOTIONAL ACTIVITIES WOULD HAVE AN IMPACT ON UNDERAGE PEOPLE?

A. YES. IN FACT, ONE OF THE THINGS FEW PEOPLE KNOW ABOUT IS, IF YOU TAKE THE MARLBORO WHAT WE CALL CONTINUITY

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PROMOTION, THAT HAS BEEN RUNNING FOR FIVE YEARS AND --

Q. LET ME STOP YOU AND ASK YOU TO EXPLAIN WHAT THAT MEANS.

A. WELL, IT'S THE MARLBORO GEAR PROMOTION, WHERE YOU SAVE MILES FROM A PACK AND YOU COLLECT MILES AND SEND IT IN. YOU GET A DUFFLE BAG OR JACKET, SOMETHING LIKE THAT. THE RULES FOR THAT PROMOTION, YOU HAVE TO BE 21 OR OVER TO REDEEM MILES. I BELIEVE THE NUMBER RIGHT NOW IS 49 STATES IN THE UNITED STATES HAVE 18 AS A MINIMUM AGE, I THINK THREE HAVE 19.

AND IN OUR SELF-IMPOSED STANDARDS FOR THIS PROMOTION, YOU HAVE TO BE 21 OR OVER TO PARTICIPATE IN IT.

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I THINK WE HAVE DEMONSTRATED OVER THE YEARS A VERY SERIOUS COMMITMENT AND ACTION TO TRY AND PUT BARRIERS BETWEEN OUR MARKETING ACTIVITIES AND UNDERAGE SMOKERS.

Q. DOES PHILIP MORRIS OR DID PHILIP MORRIS WHILE YOU WERE THERE EVER STUDY THE SMOKING HABITS OR SMOKING PATTERNS OF UNDERAGE SMOKERS?

A. THERE ARE A SERIES OF DOCUMENTS WHICH EXIST OUT OF BASICALLY ONE PERSON IN RICHMOND IN THE RESEARCH AND DEVELOPMENT DEPARTMENT, WHO WAS A DEMOGRAPHER. HE WAS NOT PART OF MARKETING. HE WAS IN RESEARCH AND DEVELOPMENT.

Q. IS THAT A MAN NAMED JOHNSTONE, MYRON JOHNSTONE?

A. MYRON JOHNSTONE.

Q. WAS HE WORKING AT PHILIP MORRIS WHILE YOU WERE THERE?

A. YES, HE WAS.

Q. AND WHAT WAS HIS POSITION AT VARIOUS POINTS IN

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TIME WHILE YOU WERE IN YOUR POSITION?

A. HE WAS IN RICHMOND IN THE MANUFACTURING AND RESEARCH AND DEVELOPMENT GROUP AND WAS A DEMOGRAPHER.

Q. BY "DEMOGRAPHER," WHAT'S THAT?

A. A DEMOGRAPHER IS A PERSON WHO STUDIES POPULATION GROUPS.

Q. LET ME SEE IF I CAN FIND FOR YOU A COUPLE OF EXHIBITS THAT ARE IN EVIDENCE ALREADY.

I MAY HAVE IT IN ANOTHER FORM, YOUR HONOR. I'VE GOT THE NUMBERS ON THE FOLDERS.

LET ME SHOW YOU, MR. MORGAN, WHAT'S BEEN MARKED AND ADMITTED INTO EVIDENCE AS PLAINTIFF'S 4-183 AND ASK YOU IF THIS IS A MEMO WRITTEN BY THE MAN YOU WERE TALKING ABOUT?

A. YES.

Q. AND WHAT ROLE, IF ANY, DID MR. JOHNSTONE PLAY IN THE CREATION OR EXECUTION OF MARKETING AND ADVERTISING FOR MARLBORO WHILE YOU WERE AT PHILIP MORRIS?

A. ABSOLUTELY NONE.

Q. HAVE YOU SEEN REPORTS THAT HE'S WRITTEN THAT TALK ABOUT SMOKING AND SMOKING PATTERNS AMONG VARIOUS GROUPS OF PEOPLE IN THE COUNTRY?

A. YES, I HAVE.

Q. AND SOME OF THEM ACTUALLY WERE WRITTEN TO YOU AT THE TIME YOU WERE AT PHILIP MORRIS?

A. I DON'T BELIEVE ANY OF MR. JOHNSTONE'S DOCUMENTS ARE WRITTEN TO ME. I BELIEVE I WAS COPIED ON SOME OF THEM.

Q. WHICH IS TO SAY, ON THE BACK PAGE THERE IS A LIST

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OF PEOPLE WHO WOULD THEY HAVE BEEN SENT TO, INCLUDING YOU?

A. YES.

Q. WHAT USE, IF ANY, DID YOU MAKE OF THE REPORTS MR. JOHNSTONE SENT TO YOU THAT RELATED TO THE TOPICS OF SMOKING AMONG DIFFERENT AGE GROUP PEOPLE?

A. WELL, MR. JOHNSTONE, AS I SAID, WAS A DEMOGRAPHER. HE WAS VERY PROLIFIC IN WHAT HE PUBLISHED. HE PUBLISHED HUNDREDS, IF NOT THOUSANDS OF DOCUMENTS, LOOKING AT ALL KINDS OF DIFFERENT SUBSETS OF THE POPULATION.

AND THERE ARE A HANDFUL OF THOSE THAT LOOKED AT PUBLIC INFORMATION OUT OF THE GOVERNMENT OR THE UNIVERSITY OF MICHIGAN THAT WAS PUBLIC DATA THAT DID LOOK AT SMOKING PATTERNS BY BELOW LEGAL AGE SMOKERS, AND I HAVE SEEN THOSE DOCUMENTS. THEY DO EXIST.

I DID NOT MAKE ANY USE OUT OF THOSE DOCUMENTS BECAUSE, AS I SAID, WE DID NOT MARKET TO UNDERAGE PEOPLE. AND THE LAWS TOLD US NOT TO, OUR OWN VOLUNTARY CODES TOLD US

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NOT TO, AND OUR OWN SENSE OF WHAT WAS RIGHT AND GOOD FOR THE COMPANY TOLD US NOT TO.

MR. JOHNSTONE -- IT WAS INTERESTING, I THINK, TO POINT OUT MR. JOHNSTONE DID WORK IN RICHMOND, NOT IN MARKETING IN NEW YORK. HE DID NOT WORK IN THE MARKETING DEPARTMENT. AND I DO KNOW THAT A LOT OF HIS DOCUMENTS, HIS DEMOGRAPHIC ANALYSES, WERE USED TO PROJECT THE SIZE OF THE INDUSTRY FIVE AND TEN YEARS OUT.

PHILIP MORRIS WAS A GROWTH COMPANY. IT WAS GROWING, AS I SAID EARLIER. AND IT TAKES ABOUT SIX YEARS TO BUILD A CIGARETTE FACTORY.

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AND DURING THE 1970S, WHEN THE BULK OF THESE ANALYSES WERE DONE BY MR. JOHNSTONE, THERE WAS A REAL ISSUE IN THE COMPANY OF WHAT KIND OF CAPACITY THE COMPANY NEEDED TO MANUFACTURE ITS CIGARETTES. AND YOU HAD ABOUT A FOUR TO SIX-YEAR LEAD TIME.

MR. JOHNSTONE'S WORK WAS VALUABLE TO THE MANUFACTURING PEOPLE AS A PROJECTION OF THE SIZE OF THE TOTAL INDUSTRY, BASED ON DEMOGRAPHIC ANALYSES. ALTHOUGH I ALSO SHOULD POINT OUT TO STUDENTS OF THE INDUSTRY THAT AT LEAST HALF IF NOT MORE OF MR. JOHNSTONE'S PROJECTIONS IN THOSE MEMOS TURNED OUT TO BE WRONG.

BUT IT WAS USED PRIMARILY AS A FORECASTING TOOL FOR THE SIZE OF THE INDUSTRY, WHICH THEN TOLD YOU HOW MUCH CAPACITY YOU NEEDED AS A MANUFACTURER.

Q. AND IN THE DOCUMENTS AND REPORTS THAT HE PREPARED WITH WHICH YOU'RE FAMILIAR, WAS HE REPORTING ON THE RESULTS OF STUDIES OR SURVEYS THAT HE HAD ACTUALLY GONE OUT AND DONE?

A. NO. I BELIEVE THAT IN ALMOST EVERY CASE, IF NOT EVERY CASE, MR. JOHNSTONE TOOK PUBLIC DATA THAT THE GOVERNMENT ITSELF TURNED OUT ON SMOKING AMONG MINORS, AND THEN WOULD CROSS-TAB THAT, FIGURE OUT WHAT THE IMPLICATIONS OF THAT WERE TO THE FUTURE OF THE INDUSTRY FIVE AND TEN YEARS OUT.

Q. WHEN YOU WERE AT PHILIP MORRIS AND YOU WERE INVOLVED IN BRAND MANAGEMENT AND MARKETING, DID YOU RECEIVE REPORTS OR KEEP TRACK OF THE PERCENTAGE OF UNDERAGE SMOKERS WHO WERE USING PHILIP MORRIS PRODUCTS?

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A. NO.

Q. DID YOU EVER HAVE ANY RESEARCH DONE OR COMMISSION ANY STUDY WHILE YOU WERE AT PHILIP MORRIS TO DETERMINE WHETHER ADVERTISING OR MARKETING DIRECTED TOWARDS ADULTS CREATED ANY EXPECTATIONS OR IMPRESSIONS ABOUT SMOKING AMONG UNDERAGE SMOKERS OR NONSMOKERS?

A. I'M SORRY. I DON'T UNDERSTAND THE QUESTION.

Q. DID YOU EVER DO ANY RESEARCH OR COLLECT ANY INFORMATION TO TRY TO DETERMINE WHETHER THE ADVERTISING THAT YOU WERE DIRECTING TO ADULT SMOKERS CREATED ANY IMPRESSION OR EXPECTATION ON THE PART OF UNDERAGE SMOKERS OR NONSMOKERS ABOUT SMOKING OR ABOUT YOUR PRODUCTS?

A. I DON'T BELIEVE SO, NO.

Q. WHAT ABOUT THE FACT -- STRIKE THAT.

FROM TIME TO TIME WHILE YOU WERE AT PHILIP MORRIS, HAS PHILIP MORRIS SPONSORED EVENTS OR PUT DISPLAYS, ADVERTISING DISPLAYS IN PLACES WHERE SMOKERS AND NONSMOKERS ALIKE ARE LIKELY TO SEE THEM?

A. YES.

Q. DOES THAT INCLUDE PEOPLE OF AGE AND PEOPLE UNDERAGE?

A. IT COULD, YES.

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Q. FOR EXAMPLE, IN BASEBALL OR FOOTBALL STADIUMS, FROM TIME TO TIME YOU'LL SEE A PHILIP MORRIS AD?
A. PHILIP MORRIS HAD MARLBORO ADS IN SPORTS STADIA AND ARENAS, AND THEY WOULD BE SEEN BY WHOEVER GOES TO THOSE EVENTS.
Q. IS THERE ANY WAY THAT YOU, AS A MARKETER OR

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ADVERTISER, CAN PREVENT PEOPLE FROM SEEING ADS WHO AREN'T OF THE LEGAL AGE TO BUY YOUR PRODUCTS?
A. NO. OTHER THAN SORT OF, ON AVERAGE, AS I SAID, THE CIGARETTE ADVERTISING CODE SAID THAT IF A MAGAZINE HAD A CIRCULATION OF MORE THAN 20 PERCENT UNDER THE AGE OF 21, THEN YOU COULDN'T ADVERTISE IN IT.
SO YOU ARE DOING IT BY SORT OF IMPROVING YOUR ODDS THAT YOU ARE NOT REACHING BELOW LEGAL AGE SMOKERS.
Q. THERE WAS A SUGGESTION OR A MENTION EARLIER IN THE CASE. LET ME ASK YOU TO ASSUME THERE WAS TESTIMONY ABOUT CIGARETTE LOGOS BEING FOUND IN EITHER MODEL TRUCKS OR THINGS CALLED CANDY CIGARETTES, THINGS LIKE THAT.
DOES PHILIP MORRIS MANUFACTURE OR SELL OR DISTRIBUTE CANDY CIGARETTES?
A. NO. NOT ONLY DO WE NOT SELL OR MANUFACTURE. OVER AT LEAST A 20-YEAR PERIOD, WE HAVE BEEN VIGILANT AND SPENT A LOT OF MONEY TRYING TO GET THOSE PEOPLE TO STOP ON A TRADEMARK INFRINGEMENT BASIS.
Q. WHAT DO YOU MEAN BY "ON A TRADEMARK INFRINGEMENT BASIS"?
A. WHERE THEY TAKE A LIKENESS OF YOUR PACK AND USE IT, WHICH IS BASICALLY AGAINST THE LAW. AND WE HAVE PURSUED THOSE PEOPLE VERY VIGILANTLY.
AND I BELIEVE -- ALTHOUGH I CAN'T SAY THIS WITH TOTAL ASSURANCE, I BELIEVE THAT THE RELATIVE APPEARANCE OF CANDY CIGARETTES IS WAY, WAY DOWN NOW, COMPARED TO WHAT IT USED TO BE.
Q. ARE YOU FAMILIAR WITH OR DID YOU -- STRIKE THAT.

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WHILE YOU WERE AT PHILIP MORRIS, WERE YOU -- STRIKE THAT.
DURING THE TIME PERIODS YOU WERE AT PHILIP MORRIS, WHEN DID THE COMPANY EITHER BEGIN OR CONTINUE TO DO THAT, TAKE THAT KIND OF ACTION WITH RESPECT TO CANDY CIGARETTES?
A. I THINK BACK IN THE 1970S, I THINK.
Q. WHAT ELSE, MR. MORGAN, IF ANYTHING, HAS THE COMPANY DONE, EITHER INDIVIDUALLY OR IN CONNECTION WITH OTHER CIGARETTE MANUFACTURES OR TRADE ASSOCIATIONS, WITH RESPECT TO ISSUES RELATING TO UNDERAGE SMOKING?
A. I THINK I'VE PRETTY MUCH REVIEWED MOST OF THEM. WE HAVE THE CIGARETTE ADVERTISING CODE. WE'VE HAD SELF-IMPOSED GUIDELINES ABOUT SAMPLES AND ABILITY TO PARTICIPATE IN PROMOTIONS. WE HAD MEDIA RESTRICTIONS.
WE HAVE THE ACTION AGAINST ACCESS PROGRAM, WHICH REALLY TRIED TO CURTAIL THE ACCESS. IT WAS CALLED ACTION AGAINST ACCESS. WE WERE TRYING TO CURTAIL THE ACCESS THAT BELOW-AGE PEOPLE HAD TO CIGARETTES.
AND ALTHOUGH I'M NOT INVOLVED IN IT BECAUSE I'M RETIRED RIGHT NOW, THE COMPANY IS ALSO RUNNING -- FUNDING AND RUNNING BASICALLY ANTISMOKING COMMERCIALS TO YOUTH.
Q. AND IN SUMMARY, CAN YOU DESCRIBE FOR US, THROUGHOUT THE TIME YOU'VE BEEN AT PHILIP MORRIS, WHAT THE PURPOSE AND EFFECT OF THE ADVERTISING, MARKETING AND PROMOTIONAL GOALS OF THE COMPANY WERE?
A. TO GET ADULTS, LEGAL-AGE SMOKERS TO CONTINUE TO

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SMOKE OUR BRAND, OR TO SWITCH FROM OUR COMPETITORS' BRAND TO OUR BRAND.

MR. OHLEMEYER: THOSE ARE ALL THE QUESTIONS I HAVE AT THIS TIME, YOUR HONOR. THANK YOU.

THE COURT: OKAY. MS. CHABER.

MS. CHABER: THANK YOU.

CROSS-EXAMINATION

BY MS. CHABER: Q. MR. MORGAN, GOOD AFTERNOON. WE'VE NOT MET BEFORE?

A. NO.

Q. MR. MORGAN, YOU'RE NOT HERE AS A TOTALLY DISINTERESTED WITNESS, ARE YOU?

A. I DON'T KNOW WHAT YOU MEAN BY THAT QUESTION.

Q. WELL, YOU'VE RETIRED FROM PHILIP MORRIS, I GUESS A YEAR AND A COUPLE OF MONTHS AGO?

A. YES, I HAVE.

Q. AND SO YOU ARE NO LONGER WORKING FOR PHILIP MORRIS?

A. I'M NOT.

Q. HOWEVER, WHEN YOU RETIRED FROM PHILIP MORRIS, YOU RETIRED WITH A VERY NICE RETIREMENT PACKAGE, DIDN'T YOU?

A. YES, I DID.

Q. YOU GET EVERY YEAR FROM PHILIP MORRIS OVER $600,000 AS PART OF THAT RETIREMENT PACKAGE?

A. YES, I DO.

Q. AND THEY PAY ALL YOUR MEDICAL INSURANCE?

A. AS THEY DO FOR ANY RETIREE, YES.

Q. AND YOUR LIFE INSURANCE?

A. YES.

Q. AND YOU OWN STOCK IN PHILIP MORRIS?

A. YES, I DO.

Q. YOU OWN SOMETHING LIKE 15,000 SHARES OF STOCK IN PHILIP MORRIS?

A. YES, I DO.

Q. AND THEN, YOU HAVE STOCK OPTIONS THAT YOU CAN EXERCISE, DO YOU NOT?

A. YES, I DO.

Q. AND HOW MANY STOCK OPTIONS DO YOU HAVE THAT YOU CAN EXERCISE?

A. I DON'T EVEN KNOW THE NUMBER. IT'S AROUND MAYBE 700,000 SHARES.

Q. 700,000 SHARES, ALL OF WHICH ARE VESTED?

A. NO.

Q. MOST OF WHICH ARE VESTED?

A. MOST OF WHICH ARE VESTED.

Q. SOME 600,000 SHARES?

A. SOMETHING LIKE THAT.

Q. AND HAVE YOU STARTED TO EXERCISE YOUR STOCK OPTIONS ON THOSE SHARES?

A. NO, I HAVE NOT.

Q. AM I CORRECT THAT YOU COULD START EXERCISING YOUR STOCK OPTIONS ON THOSE SHARES?

A. YES.

Q. AND IF YOU DID SO, THE VALUE OF THOSE SHARES IS SOMEWHERE IN THE $12 MILLION RANGE?

A. I WISH.

Q. WELL, THEN, WHY DON'T YOU TELL ME WHAT THE RANGE OF PROFIT IS THAT YOU CAN MAKE BY EXERCISING YOUR SHARES OF STOCK.

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A. RIGHT AROUND NOW, THAT WHICH IS VESTED AT TODAY'S MARKET PRICE?
Q. WHAT PERCENTAGE IS VESTED TODAY?
A. YOU SAID ABOUT 600,000 SHARES.
Q. OKAY. SO WHY DON'T YOU GIVE US AN IDEA WHAT THAT 600,000 SHARES OF STOCK TRANSLATE TO.
A. AT TODAY'S MARKET PRICE, ABOUT $8 MILLION.
Q. AND THEN, YOU HAVE ANOTHER HOW MUCH -- WHAT IS THE ADDITIONAL AMOUNT OF STOCK OPTIONS?
A. SEVERAL HUNDRED THOUSAND DOLLARS.
Q. I MEANT NUMBER OF SHARES, BUT YOU JUST TRANSLATED IT WITHOUT MY ASKING.
A. RIGHT. SORRY.
Q. THAT'S OKAY.
A. I KNEW WHERE YOU WERE HEADED.
Q. I'LL ACCEPT THAT. OKAY.
AND IS IT FAIR TO SAY THAT OVER THE 25 OR 30 YEARS THAT YOU WORKED FOR PHILIP MORRIS, THAT YOU WERE A VERY LOYAL EMPLOYEE?
A. OTHER THAN THE FACT THAT I LEFT THE COMPANY, YES.
Q. YOU CAME BACK; RIGHT?
A. I CAME BACK.
Q. YOU CAME BACK BECAUSE THEY TREATED YOU VERY WELL AND YOU MADE A LOT OF MONEY?
A. NO. THAT IS NOT WHY I CAME BACK.

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Q. YOU DID MAKE A LOT OF MONEY, THOUGH, FROM PHILIP MORRIS?
A. OVER THE YEARS?
Q. OVER THE YEARS.
A. YES, I DID.
Q. YOUR SALARY WAS IN THE RANGE OF OVER $600,000 EVERY YEAR?
A. NO, NOT EVEN CLOSE. THE LAST TWO YEARS.
Q. THE LAST TWO YEARS, IT WAS 600,000 PLUS THE STOCK OPTIONS, PLUS ANNUAL INCENTIVE BONUSES?
A. CORRECT.
Q. AND ANNUAL INCENTIVE BONUSES COULD BE AS MUCH AS YOUR TOTAL SALARY?
A. IT COULD BE.
Q. AND IN FACT, THAT HAPPENED ON AT LEAST ONE OCCASION; CORRECT?
A. THAT HAPPENED ON ONE OCCASION.
Q. NOW, YOUR COMPANY, OR YOUR FORMER COMPANY, PHILIP MORRIS, IS A MEMBER OF SOME ORGANIZATIONS.
THE TOBACCO INSTITUTE; CORRECT?
A. CORRECT, ALTHOUGH DOES THAT STILL EXIST? I DON'T KNOW.
Q. YOU PROBABLY WOULD KNOW BETTER THAN I DO.
DID IT EXIST WHEN YOU LEFT ON NOVEMBER 1ST, 1997?
A. YES, IT DID.
Q. AND DURING THE TIME PERIOD THAT YOU WERE THERE, PHILIP MORRIS WAS A 50 PERCENT FUNDER OF THE TOBACCO INSTITUTE; IN OTHER WORDS, IT PAID 50 PERCENT OF THE COSTS

0055

AND BILLS OF THE TOBACCO INSTITUTE?
A. I DON'T KNOW IF IT'S 50 PERCENT, BUT IT WOULD HAVE BEEN CLOSE TO IT.
Q. AND I THINK YOU INDICATED THAT PHILIP MORRIS HAS 50 PERCENT OF THE MARKET IN CIGARETTES?
A. CORRECT.
Q. AND THAT'S SOMETHING THAT HAS GONE UP OVER THE YEARS; CORRECT?

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A. ITS SHARE OF MARKET?
Q. YES.
A. YES.
Q. TO THE POINT WHERE YOU NOW SELL THE NO. 1 BRAND OF CIGARETTES?
A. YES.
Q. AND THAT'S MARLBORO?
A. YES.
Q. AND THE NO. 2 BRAND OF CIGARETTES IS WHAT?
A. WHEN I LEFT, IT WAS CAMEL.
Q. AND DO YOU KNOW, SIR, HOW MANY CAMEL SMOKERS YOUR COMPANY SUCCESSFULLY SWITCHED TO MARLBORO?
A. I DON'T KNOW THE NUMBER, BUT IT WOULD BE DETERMINABLE.
Q. THAT'S NOT SOMETHING YOU EVER LOOKED INTO TO SEE WHETHER OR NOT YOU WERE GETTING BASICALLY BANG FOR YOUR BUCK IN YOUR ADVERTISING DOLLARS, TO SEE IF YOU WERE GETTING THE SWITCHERS?
A. I USED TO BE ABLE TO QUOTE THOSE NUMBERS EVERY YEAR FOR THE TOP 10 BRANDS. I KNEW THOSE NUMBERS. I DON'T

0056

KNOW THEM NOW.
Q. NOW, SIR, YOU'VE BEEN GONE FROM PHILIP MORRIS SINCE NOVEMBER OF 1997, BUT YOU HAVEN'T BEEN GONE FROM THE ISSUE OF WHAT PHILIP MORRIS DID OR HAS DONE WITH RESPECT TO ADVERTISING; CORRECT?
A. IN WHAT TIME FRAME?
Q. RIGHT TO THE PRESENT MOMENT, SIR.
A. I HAVE BEEN TOTALLY WITHDRAWN SINCE NOVEMBER 1ST, 1997. I'VE BEEN IN THE BUILDING TWICE SINCE THEN.
Q. AND, SIR, YOU HAVE BEEN TESTIFYING IN TRIALS SINCE THEN ON THAT VERY ISSUE, HAVEN'T YOU, ABOUT THE PERCENTAGE OF PEOPLE WHO SWITCH FROM ONE BRAND TO ANOTHER, WHICH IS WHAT YOUR ADVERTISING IS GEARED TO?
A. I DO NOT BELIEVE I'VE TESTIFIED AS TO ANY NUMBERS AT ALL. I'VE SAID THAT SWITCHING IS A VITALLY IMPORTANT PART OF MARKETING IN CIGARETTES.
Q. AND IN EVERY ONE OF THESE TRIALS, SIR, IS IT FAIR TO SAY THAT YOU HAVE BEEN ASKED THAT QUESTION: HOW MANY PEOPLE HAVE ACTUALLY DONE THIS SWITCHING?
A. NO, I DON'T RECALL BEING ASKED THAT BEFORE.
Q. SO YOU DON'T HAVE THE FIGURES TO BE ABLE TO GIVE US WITH RESPECT TO HOW MUCH YOU SPENT ON ADVERTISING TO GET PEOPLE TO SWITCH BRANDS AND HOW SUCCESSFUL IT WAS?
A. OH, THAT DATA EXISTS IN ANY NUMBER OF REPORTS THAT YOU AND I COULD FIND IN FIVE MINUTES, IF WE WENT INTO PHILIP MORRIS. AND I CAN GIVE YOU A BOXCAR NUMBER, IF YOU'D A LIKE IT.
Q. SO YOU COULD HAVE FOUND THAT INFORMATION AND KNOW

0057

THAT INFORMATION AS YOU SIT HERE TODAY?
A. YES. I USED TO KNOW IT.
YOU ASKED ME AS OF TODAY WHAT WAS THE SWITCHING NUMBER, AND I SAID I DON'T KNOW.
Q. AND WHEN YOU TESTIFIED IN OTHER TRIALS, YOU DIDN'T KNOW THE ANSWER TO THAT EITHER?
A. YOU KEEP SAYING "OTHER TRIALS."
I TESTIFIED IN ONE TRIAL.
Q. AND THAT WAS IN MINNESOTA?
A. YES.
Q. AND WHEN YOU TESTIFIED IN THAT TRIAL, YOU TESTIFIED FOR A COUPLE OF DAYS?
A. THREE DAYS.

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Q. THREE DAYS.
AND A LOT OF THE TESTIMONY THAT YOU TESTIFIED ABOUT HAD TO DO WITH ALL YOUR ADVERTISING IS GEARED TOWARDS GETTING PEOPLE TO SWITCH BRANDS; CORRECT?
MR. OHLEMEYER: YOUR HONOR, I OBJECT TO QUESTIONS THAT DESCRIBE TESTIMONY IN AN UNRELATED CASE. I DON'T THINK IT'S PROPER. I THINK IT'S ARGUMENTATIVE AND IMPROPER UNLESS IT'S TO IMPEACH, AND IT'S NOT IN THE PROPER FORM TO IMPEACH.
SO I OBJECT TO IT FOR THAT REASON.
THE COURT: I'LL OVERRULE.
'A LOT OF TESTIMONY' IS VAGUE. WHY DON'T YOU REPHRASE THE QUESTION. WE'LL SEE IF THERE IS AN OBJECTION TO THE REPHRASED QUESTION.
MS. CHABER: Q. A PORTION OF YOUR THREE DAYS'

0058

WORTH OF TESTIMONY IN MINNESOTA WAS DEVOTED TO YOU TELLING THAT JURY THAT THE ADVERTISING THAT PHILIP MORRIS DOES IS FOR THE PURPOSE OF GETTING PEOPLE TO SWITCH BRANDS; CORRECT?
A. CORRECT. SEVEN TO 10 PERCENT OF SMOKERS SWITCH IN A YEAR, AND THAT THE ADVERTISING AND MARKETING IS PRIMARILY SPENT TO GET THAT SEVEN TO 10 PERCENT WHO ARE GOING TO SWITCH OF SMOKERS TO SWITCH TO YOUR BRAND.
Q. SO IT'S A SEVEN TO 10 PERCENT SWITCH OF SMOKERS?
A. CORRECT.
Q. OKAY. AND YOU ARE AWARE, AREN'T YOU, THAT MARLBORO IS THE LEADING BRAND AMONG TEENAGERS, AREN'T YOU?
A. I'M AWARE OF THAT.
Q. AND IT'S FAIR TO SAY, SIR, THAT IF -- STRIKE THAT.
IS IT FAIR TO SAY, SIR, THAT THE MAJORITY OF PEOPLE WHO REMAIN SMOKERS ARE PEOPLE WHO STARTED WHEN THEY WERE MINORS?
A. I'M NOT SURE I UNDERSTAND THE SUBTLETY OF YOUR QUESTION.
Q. I DON'T THINK IT WAS THAT SUBTLE, BUT I WILL TRY AGAIN.
A. IT IS.
Q. ISN'T IT TRUE, SIR, THAT UNLESS AN INDIVIDUAL HAS STARTED SMOKING BEFORE THE AGE OF 21, THEY ARE UNLIKELY TO TAKE UP THE ACT OF SMOKING?
A. I BELIEVE THAT'S A FAIR STATEMENT. IT'S SAID FUNNY, BUT I BELIEVE THAT'S A FAIR STATEMENT.
Q. IT WASN'T MEANT TO BE FUNNY.

0059

A. I DIDN'T MEAN FUNNY HA-HA. I JUST MEANT --
Q. SOMETIMES I MEAN TO BE FUNNY, BUT THAT WAS NOT ONE OF THEM.
SO IF I UNDERSTAND CORRECTLY, THEN, THE PEOPLE WHO REMAIN SMOKERS WHO ARE PEOPLE WHO YOU DIRECT YOUR ADVERTISING TO ARE THOSE PEOPLE WHO START SMOKING WHEN THEY ARE TEENAGERS; IS THAT A FAIR STATEMENT?
A. I DON'T KNOW THAT THAT'S A FAIR STATEMENT.
Q. WELL, SIR, YOU DO UNDERSTAND THAT PEOPLE WHO DON'T START WHEN THEY ARE MINORS ARE UNLIKELY TO START SMOKING AFTER THEY REACH THE AGE OF MAJORITY?
A. THAT IS WHY I QUIBBLED WITH YOUR STATEMENT A LITTLE. YOU ARE CHANGING THE TERMS.
YOU FIRST SAID THAT PEOPLE WHO DON'T SMOKE BEFORE THE AGE OF 21 ARE NOT LIKELY TO SMOKE. I AGREED WITH THAT.
NOW, YOU HAVE REPHRASED THE QUESTION AND SAID "MINORS," AND WHAT YOU HAVE DONE IS YOU HAVE TAKEN 18 TO 21-YEAR SMOKERS OUT OF THE STATEMENT LIKE THEY DON'T EXIST.

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AND THERE ARE PLENTY OF PEOPLE WHO GO AWAY TO COLLEGE AND START SMOKING WHEN THEY ARE 18 TO 21.

SO YOU'RE ASKING -- YOU'RE ASKING AN APPLES-AND-ORANGES QUESTION, AND YOU'RE TRYING TO SUGGEST, TO ME AT LEAST, AS I UNDERSTAND IT, THAT YOU ARE ASKING THE SAME QUESTION.

IT'S NOT THE SAME QUESTION AT ALL. YOU HAVE DROPPED THREE YEARS OUT OF THE EQUATION. PEOPLE OF 18 AND ABOVE ARE NOT MINORS AND NOT ILLEGAL SMOKERS.

Q. ALL RIGHT. LET ME START THIS OVER AGAIN.

0060

IS IT TRUE, SIR, THAT THE VAST MAJORITY OF SMOKERS WHO REMAIN SMOKERS START SMOKING BEFORE THE AGE OF 18?

A. I DO NOT KNOW THAT AS A FACT.

Q. HAVE YOU SEEN DOCUMENTS PUT OUT OR WITHIN THE PHILIP MORRIS FILES THAT SAY THAT?

A. NOT SPECIFICALLY THAT THE MAJORITY OF SMOKERS TODAY IN THE COUNTRY STARTED SMOKING BEFORE THEY'RE 18. NO, I HAVE NOT SEEN THAT.

Q. LET'S GO BACK TO OTHER YEARS THEN.

ISN'T IT TRUE, SIR, THAT THE INFORMATION IS THAT THE MAJORITY OF PEOPLE WHO CONTINUE TO SMOKE CIGARETTES ARE PEOPLE WHO STARTED SMOKING BEFORE THE AGE OF 18?

A. THAT IS WHAT I'M SAYING I'M NOT SURE I CAN AGREE WITH.

Q. AND YOU'RE NOT FAMILIAR WITH DOCUMENTS WITHIN THE PHILIP MORRIS FILES THAT SAY THAT?

A. I DON'T BELIEVE THAT'S WHAT THEY SAID. I MAY BE WRONG, BUT I DON'T THINK THE WAY YOU'RE SAYING IT IS WHAT THOSE DOCUMENTS SAY.

Q. AND YOU ARE FAMILIAR WITH PHILIP MORRIS HIRING ORGANIZATIONS LIKE ROPERS TO GATHER INFORMATION AS TO WHO IS SMOKING AND WHAT BRANDS THEY ARE SMOKING?

A. YES.

Q. AND YOU'RE AWARE THAT PHILIP MORRIS HAS HIRED ROPERS TO DO THAT?

A. YES.

Q. AND AT THE TIME THAT PHILIP MORRIS HIRED ROPERS

0061

TO DO THAT, ARE YOU AWARE THAT THEY LOOKED AT CHILDREN FROM THE AGE OF 11 TO 15 YEARS OLD TO SEE HOW MANY WERE SMOKING CIGARETTES?

A. I'M AWARE THAT, IN APPROXIMATELY 26 YEARS OF ROPERS REPORTS, ONE ROPER REPORT, WHICH I BELIEVE WAS IN 1974, DID IN FACT LOOK AT THE BELOW-LEGAL AGE SMOKER, FOR EXAMPLE.

I HAVE SAID IN EVERY DEPOSITION AND IN MINNESOTA THAT I'M HIGHLY EMBARRASSED BY THAT. THAT SHOULD NOT HAVE HAPPENED. IT WAS A BAD MISTAKE. ONE REPORT.

Q. AND, SIR, IS IT JUST THEN A COINCIDENCE THAT MARLBORO HAPPENS TO BE THE LARGEST SELLING BRAND AMONG TEENAGERS?

A. I DON'T UNDERSTAND WHAT THE RELATIONSHIP IS.

Q. WELL, SIR, YOU DON'T MARKET TO TEENAGERS. YOU ONLY MARKET TO PEOPLE WHO ARE SWITCHING SMOKING; CORRECT? SWITCHING BRANDS; CORRECT?

A. ADULTS, YES.

Q. YOU DON'T MARKET TO PEOPLE WHO AREN'T SMOKERS IN ORDER TO GET THEM TO SMOKE?

A. THAT IS MY BELIEF.

Q. SO YOUR BELIEF IS ALL OF YOUR MARKETING, YOUR ADVERTISING, EVERYTHING THAT YOU DO IS GEARED TOWARDS THAT

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SEVEN TO 10 PERCENT OF THE SMOKERS WHO WANT TO CHANGE BRANDS?

A. THAT IS CORRECT.

Q. AND, SIR, IS IT FAIR TO SAY THAT IF YOU TOOK THE BASE OF WHAT YOU CLAIM IS THE BUSINESS, THE OVER-21 OR

0062

OVER-18, WHATEVER AGE YOU WANT TO PUT ON IT SMOKER, AND THE ONLY THING THAT PHILIP MORRIS IS DOING IS TRYING TO GET ANOTHER SEVEN OR 10 PERCENT OF PEOPLE ALREADY IN THAT GROUP WHO SMOKE TO CHANGE TO YOUR BRAND, ISN'T IT TRUE, SIR, THAT YOU'D BE OUT OF BUSINESS BECAUSE YOU WOULD BE GETTING NO NEW SMOKERS?

A. NO, THAT IS NOT TRUE AT ALL. EVERYBODY TRIES TO PRESENT THAT POINT OF VIEW. IT IS MATHEMATICALLY UNTRUE AND IT'S STRATEGICALLY UNTRUE.

SEVEN TO 10 PERCENT OF PEOPLE SWITCH. IF YOU ARE A COMPANY AS BIG AS PHILIP MORRIS THAT HAS, LET'S SAY, A 40 PERCENT SHARE OF THE MARKET, IF YOU CAN GET FOUR POINTS OF THAT 7 PERCENT WHO SWITCH TO COME TO YOUR BRAND, YOU JUST INCREASED YOUR BUSINESS 10 PERCENT.

HOW MANY YOUNG SMOKERS DO YOU THINK THERE ARE IN THE COUNTRY? WHAT'S THE BIGGEST NUMBER OF BELOW-AGE, LEGAL AGE? DO YOU KNOW HOW MANY THERE ARE?

Q. DO YOU KNOW?

A. THEY PALE IN COMPARISON STATISTICALLY TO THE NUMBER OF SMOKERS WHO ARE AVAILABLE OF COMPETITIVE BRANDS. THEY JUST PALE. IT'S NOT A BUSINESS PROPOSITION.

Q. IF YOU DO NOT ATTRACT NEW SMOKERS, NONSMOKERS TO YOUR BRAND, SOONER OR LATER THE POPULATION OF ALREADY SMOKERS ARE GOING TO GET OLDER AND DIE; CORRECT, SIR?

A. THAT IS CORRECT.

Q. AND SO YOU NEED TO HAVE NEW SMOKERS SMOKING MARLBORO AND VIRGINIA SLIMS AND PARLIAMENT AND PHILIP MORRIS CIGARETTES IN ORDER TO HAVE A CONTINUED BUSINESS?

0063

A. I DISAGREE WITH THAT. YOU CAN -- YOU CAN GO FOR YEARS AND YEARS AND YEARS GROWING YOUR MARKET SHARE ONE OR TWO POINTS A YEAR, WITH THE INDUSTRY GOING DOWN, AND YOU CAN GROW.

AND THAT IN FACT IS THE HISTORY OF PHILIP MORRIS. THAT IS PRECISELY THE HISTORY OF THE COMPANY. AS THE INDUSTRY DECLINED IN SIZE, PHILIP MORRIS GREW ITS MARKET SHARE BY ATTRACTING SWITCHERS, AND PHILIP MORRIS HAS GROWN IN UNIT VOLUME AS A RESULT.

Q. SIR, ARE THE SWITCHERS STARTING SMOKING WHEN THEY ARE UNDERAGE?

A. ARE THE SWITCHERS --

Q. STRIKE THAT. IT WAS A BADLY PHRASED QUESTION.

YOU SAY THAT THE ONLY PEOPLE YOU'RE GEARING YOUR ADVERTISING, YOUR PROMOTION, ALL YOUR CAMPAIGNS TO ARE THOSE PEOPLE WHO ARE ALREADY SMOKING?

A. I SAY THAT, YES.

Q. OKAY.

A. YES.

Q. SO IF WE FROZE THE MOMENT IN TIME TO THE PEOPLE WHO ARE ALREADY SMOKING, IN 20 OR 30 YEARS, THOSE PEOPLE WILL NOT BE AROUND ANY LONGER; CORRECT?

A. 30 OR 40 YEARS.

Q. 30 OR 40?

A. 50 YEARS.

Q. SOME OF THEM ARE GOING TO DIE FROM DISEASES CAUSED FROM SMOKING THAT CIGARETTE SOONER THAN THEIR LIFE EXPECTANCY, AREN'T THEY?

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A. THEY MIGHT, ACCORDING TO THE STATISTICS.
Q. IT'S JUST STATISTICS; ISN'T THAT RIGHT?
A. NO. IT'S WHAT'S BECOME ACCEPTED SCIENTIFIC EVIDENCE.
Q. YOU BELIEVE THAT CIGARETTE SMOKING CAUSES DISEASES LIKE LUNG CANCER AND EMPHYSEMA AND HEART DISEASE, DON'T YOU, SIR?
A. I BELIEVE THAT THE STATISTICS THAT ASSOCIATE CIGARETTES WITH THOSE DISEASES IS REAL.
Q. DOES THAT MEAN CAUSE, SIR?
A. NOT THE WAY I DEFINE "CAUSE," BECAUSE I STILL DON'T KNOW THAT THE MECHANISM BY WHICH THAT STATISTICAL ASSOCIATION EXISTS IS UNDERSTOOD.
Q. NOW, EVERY HEALTH ORGANIZATION, EVERY INTERNATIONAL ORGANIZATION HAS SAID THAT THERE IS A CAUSAL RELATIONSHIP BETWEEN SMOKING CIGARETTES AND LUNG CANCER, EMPHYSEMA, HEART DISEASE; CORRECT?
A. BASED ON THE STATISTICS, YES.
Q. WELL, SIR, THEY HAVE SAID THAT IT IS BASED ON MORE THAN JUST STATISTICS, HAVE THEY NOT?
A. I DO NOT BELIEVE THAT, UNLESS I'M VERY WRONG. WE SAID IN THE BEGINNING I'M NOT A DOCTOR, BUT I DO NOT BELIEVE THAT ANYBODY HAS YET DEMONSTRATED HOW YOU GO FROM SMOKING A CIGARETTE TO CANCER. I DO NOT BELIEVE THAT THE SCIENCE OF THAT, THE BIOLOGY OF THAT IS UNDERSTOOD.
THERE ARE PLENTY OF PEOPLE WHO SMOKE WHO NEVER GET CANCER. THERE ARE NONSMOKERS WHO DO GET CANCER.
SO THE WORD "CAUSE" IS TO ME A VERY BROAD WORD.

0065

I'M MORE COMFORTABLE SAYING I ACCEPT THE DATA THAT SAYS THAT IF YOU SMOKE A CIGARETTE, YOU HAVE MUCH HIGHER ODDS OF GETTING CANCER, EMPHYSEMA AND HEART DISEASE.
I ACCEPT THAT. I DON'T THINK THERE'S ANY QUESTION ABOUT THAT.
Q. AND THAT IS A CHANGE FOR PHILIP MORRIS, ISN'T IT, SIR, YOUR STATEMENT THAT IT IS ACCEPTED THAT CIGARETTE SMOKERS ARE GOING TO GET LUNG CANCER, EMPHYSEMA, HEART DISEASE?
A. A CHANGE? IT'S BEEN A SOCIETAL CHANGE. ALSO, IT DEPENDS WHAT TIME FRAME YOU ARE TALKING ABOUT.
Q. WELL, SIR, UP UNTIL, SAY, THE LATE 1980S, WASN'T PHILIP MORRIS' POSITION THAT CIGARETTE SMOKING HAD NOT BEEN PROVEN TO CAUSE ANY DISEASES?
A. I DON'T KNOW THAT. I'M AWARE THAT PHILIP MORRIS' POSITION -- I'M SORT OF OUT OF MY AREA HERE, BUT PHILIP MORRIS' POSITION WAS THAT IT HAD NOT BEEN PROVEN TO CAUSE LUNG CANCER. I DON'T KNOW WHETHER IT WAS "ANY DISEASES" WAS THE STATEMENT.
Q. WELL, SIR, THE TOBACCO INSTITUTE, OF WHICH PHILIP MORRIS PAYS HALF OR APPROXIMATELY HALF OF THE COSTS IN FUNDING THE TOBACCO INSTITUTE, TO THIS DAY STILL MAINTAINS THAT CIGARETTE SMOKING HAS NOT BEEN PROVEN TO CAUSE THESE DISEASES; ISN'T THAT TRUE?
A. I DON'T BELIEVE THAT'S TRUE.
Q. SIR --
A. YOU'D HAVE TO SHOW ME THE TOBACCO INSTITUTE PUBLICATION THAT SAYS THAT. I DON'T BELIEVE THAT.

0066

Q. SIR, BEFORE WE GET TO THOSE THINGS, LET ME JUST ASK YOU THIS QUESTION: PHILIP MORRIS OVER THE YEARS HAS DONE MOTIVATIONAL RESEARCH, HAVE THEY NOT, WHAT MOTIVATES PEOPLE TO START SMOKING?

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A. I DON'T KNOW WHETHER PHILIP MORRIS HAS DONE THAT RESEARCH OR PUBLISHED PUBLICLY INFORMATION -- PUBLICLY AVAILABLE INFORMATION AND REVIEWED STUDIES THAT OTHER PEOPLE HAVE DONE.

Q. YOU CERTAINLY KNOW THAT INTERNALLY, WITHIN PHILIP MORRIS, WHY PEOPLE START SMOKING HAS BEEN A TOPIC OF CONSIDERABLE INTEREST?

A. YES. YOU PROBABLY HAVE A MEMO THAT I WAS REFERRED TO IN THAT.

Q. OKAY. AND IN FACT, MR. JOHNSTONE ISN'T THE ONLY ONE WHO WROTE MEMOS ON THAT SUBJECT, IS HE?

A. NO. DR. UDOW DID, I BELIEVE.

Q. AND DR. DUNN?

A. DR. DUNN.

Q. AND THERE HAVE BEEN IN FACT A WHOLE SERIES OF MEMOS AND EXAMINATIONS INTO THE REASONS AND MOTIVATIONS FOR WHY PEOPLE START SMOKING?

A. I WANT TO BE CAREFUL IN ANSWERING THAT. I WOULD AGREE THAT THERE HAVE BEEN A NUMBER OF MEMOS ABOUT WHY PEOPLE SMOKE. I'M NOT SURE THERE ARE A SERIES OF MEMOS ABOUT WHY PEOPLE START SMOKING.

Q. YOU HAVEN'T REVIEWED THAT RECENTLY?

A. I'M GENERALLY FAMILIAR. I KNOW THERE ARE MEMOS FOR BOTH. YOU ARE PUTTING -- WE'RE SORT OF DEALING WITH IT

0067

IN CHARACTERIZATIONS OF "SERIES," "A FEW," "MANY."

I WOULD CONTINUE TO ASSERT, HOWEVER, THAT A REVIEW OF WHATEVER DOCUMENTS THERE ARE WILL FIND THAT THEY ARE LARGELY REVIEWS OF OTHER PEOPLE'S WORK, PUBLIC INFORMATION, RATHER THAN WORK THAT PHILIP MORRIS DID SPECIFICALLY ON ITS OWN.

Q. AND THOSE REVIEWS, EVEN IF THEY ARE OF OTHER PEOPLE'S WORK, WERE TO UNDERSTAND THE MOTIVATION AND INCENTIVES FOR PEOPLE TO START SMOKING AND TO CONTINUE SMOKING?

A. CORRECT. IT WAS TO UNDERSTAND THE DYNAMICS OF THE PRODUCT WE MANUFACTURE, YES.

Q. NOW, YOU INDICATED THAT MARLBORO LIGHTS WAS -- MARLBORO REDS, THE RED AND WHITE PACK, WAS MARLBORO'S NO. 1 SELLING BRAND?

A. WHEN?

Q. NOW.

A. NO.

Q. NOT --

A. NO.

Q. IT LOST A LITTLE MARKET SHARE?

A. NO. MARLBORO LIGHTS GREW RIGHT PAST IT.

Q. SO MARLBORO LIGHTS NOW IS THE NO. 1 SELLING BRAND?

A. PACKINGS. MARLBORO IS THE BRAND.

Q. YES.

A. MARLBORO HAS VERSIONS. THERE IS A MARLBORO MENTHOL, A MARLBORO LIGHTS, A MARLBORO HUNDREDS, A MARLBORO

0068

ULTRALIGHTS, MARLBORO RED. THOSE ARE CALLED PACKINGS IN MY TERMINOLOGY.

Q. PACK?

A. P-A-C-K-I-N-G-S.

Q. LIKE A PACKAGE?

A. YES.

Q. PACKINGS?

A. YES.

SO THE MARLBORO BRAND IS THE NO. 1 BRAND IN THE

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UNITED STATES, AND UNDER THAT, THERE ARE A WHOLE BUNCH OF PACKINGS. MARLBORO LIGHTS AS A PACKING IS THE LARGEST SELLING SUBSET OF MARLBORO.

Q. AND MARLBORO REDS ARE RIGHT BEHIND IT?

A. MARLBORO REDS ARE ABOUT 80 PERCENT OF THAT.

Q. OKAY. SO IF WE'RE TALKING ABOUT THE NO. 1 CIGARETTE IN THE UNITED STATES, WE'RE TALKING ABOUT MARLBORO LIGHTS OR MARLBORO REDS; CORRECT?

A. COMBINED.

Q. COMBINED?

A. YES. IF THEY WERE SEPARATE BRANDS, MARLBORO LIGHTS WOULD BE THE NO. 1 BRAND AND MARLBORO RED WOULD BE THE NO. 2 BRAND IN THE UNITED STATES.

Q. OH, OKAY. SO WE'VE GOT THE NO. 1 BRAND BEING THE MARLBORO LIGHTS, THE GOLDEN AND WHITE PACK, AND WE'VE GOT THE NO. 2 BRAND BEING THE MARLBORO REDS, THE RED AND WHITE PACK?

A. NO. 2 PACKING.

Q. NO. 2 PACKING. I CAN'T GET THAT.

0069

WHEN WE'RE TALKING ABOUT PACKS, THOUGH, ARE WE ACTUALLY TALKING ABOUT THE PHYSICAL PACK OF CIGARETTES?

A. WE'RE SAYING PACKINGS.

Q. PACKINGS?

A. IN OTHER WORDS, MARLBORO LIGHTS -- THIS IS JUST -- MARLBORO LIGHTS IS A MARLBORO PACKING. I CAN USE A DIFFERENT WORD, IF YOU WANT. I MEAN, THAT'S WHAT WE CALLED IT.

Q. I JUST DON'T WANT TO BE IN A POSITION WHERE YOU THINK I'M GIVING YOU A STATEMENT AND NOT USING THE RIGHT LANGUAGE. SO I WANT TO UNDERSTAND WHAT YOU ARE USING.

A. OKAY. LET'S SAY MARLBORO IS THE BRAND, ALL MARLBOROS. ANYTHING THAT SAYS "MARLBORO" ON IT IS THE BRAND.

YOU CAN PICK THE WORD FOR UNDER THAT.

Q. OKAY.

A. ALL RIGHT. SO JUST DON'T USE "BRAND."

Q. ALL RIGHT. BUT I'M TRYING TO GET IN THE BIG PICTURES OF CIGARETTE SALES IN THE UNITED STATES.

IS THE MARLBORO LIGHT THE NO. 1 CIGARETTE SOLD IN THE UNITED STATES?

A. YES.

Q. AND THE MARLBORO RED IS THE NO. 2 CIGARETTE SOLD IN THE UNITED STATES?

A. WE FOUND A PLATFORM FOR AGREEMENT.

Q. WE JUST ELIMINATED THE WORD ENTIRELY.

SO WE HAVE THE NO. 1 AND THE NO. 2 CIGARETTES.

SIR, WHAT HEALTH EVALUATION, WHAT STUDIES WERE

0070

DONE TO DETERMINE WHETHER THERE IS ANY DIFFERENCE TO THE SMOKER HEALTHWISE FROM SMOKING A MARLBORO LIGHT CIGARETTE, THE NO. 1 BRAND, OR THE NO. 2 BRAND, THE MARLBORO RED CIGARETTES?

A. I'M NOT AWARE OF ANY STUDIES.

Q. AND YOU, SIR, AS A PRESIDENT AND CEO OF PHILIP MORRIS, IF SOMETHING LIKE THAT HAD BEEN DONE AND THERE WAS EVIDENCE OUT THERE THAT THE NO. 1 BRAND, MARLBORO LIGHTS, WAS MORE HEALTHFUL, IF IT HAD BEEN STUDIED BY MARLBORO -- BY PHILIP MORRIS, THAN THE RED BRAND, YOU'D BE THE PERSON WHO SHOULD KNOW THAT?

A. I DON'T BELIEVE THAT THERE ARE ANY STUDIES, INCLUDING GOVERNMENT STUDIES OR NATIONAL CANCER INSTITUTE. I DON'T KNOW THAT THERE ARE ANY STUDIES THAT SHOW THAT A

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LOW-TAR CIGARETTE IS HEALTHIER THAN A LESS LOW-TAR CIGARETTE.

Q. SO YOU SWITCHED -- I CAN'T REMEMBER WHICH PART OF THE STORY IT WAS. WAS IT NO. 3 OR NO. 4 OF THE HISTORY OF MARLBORO?

A. NO. 4.

Q. NO. 4. OKAY.

SO THE NO. 4 PART OF THE STORY, WHERE YOU SWITCHED TO LIGHT CIGARETTES, TO LOW-TAR CIGARETTES?

A. NO.

Q. AM I IN THE WRONG STORY?

A. YOU ARE USING THE WRONG WORDS.

Q. DO YOU MEAN "SWITCH"?

A. WE USE INTRODUCED A LIGHT VERSION OF MARLBORO.

0071

THERE WAS NO SWITCHING INVOLVED.

Q. I APOLOGIZE. I DID NOT MEAN TO MISCHARACTERIZE THAT.

YOU ADDED TO YOUR BRAND PACKINGS --

A. WAY TO GO.

Q. -- THE LIGHT CIGARETTE; CORRECT?

A. MARLBORO LIGHTS, CORRECT.

Q. AND YOU PROMOTED THE LIGHT CIGARETTE AS A LESS TAR, LESS NICOTINE, LIGHTER CIGARETTE?

A. THAT IS CORRECT.

Q. AND THE IMPLICATION OF THAT FOR THE CONSUMER IS THAT, SOMEHOW, IF YOU ARE SMOKING A LIGHT CIGARETTE THAT IS LOWER IN TAR AND LOWER IN NICOTINE, THAT SOMEHOW IT'S HEALTHIER FOR YOU? IS THAT A FAIR CHARACTERIZATION, SIR?

A. IT'S A FAIR CHARACTERIZATION, WITH ONE COMMENT, WHICH IS, IN 1954, THE READER'S DIGEST, 20 YEARS -- ALMOST 20 YEARS EARLIER THAN THE INTRODUCTION OF MARLBORO LIGHTS -- IN 1954, THE READER'S DIGEST STARTED PUSHING TAR AND NICOTINE AS A HEALTH ISSUE.

FOR MANY YEARS, THE GOVERNMENT PROHIBITED THE CIGARETTE INDUSTRY FROM TALKING ABOUT TAR AND NICOTINE, THEN REVERSED ITS POLICY, AND THE GOVERNMENT ENCOURAGED THE COMPANIES TO START COMING OUT WITH LOWER-TAR CIGARETTES.

BY THE TIME MARLBORO LIGHTS CAME OUT IN 1973 WITH A LOW-TAR MARLBORO, ALMOST 15 PERCENT OF THE INDUSTRY WAS ALREADY LOW-TAR BRANDS. SO THE CONSUMER HAD DEMONSTRATED THEIR DESIRE FOR LOW-TAR CIGARETTES, AND ULTIMATELY MARLBORO LIGHTS WAS INTRODUCED INTO THAT KIND OF MARKET.

0072

YES, THE CONSUMER, I BELIEVE, DID BELIEVE THAT LOW-TAR CIGARETTES WERE -- WHATEVER THE WORD IS -- LESS HARMFUL OR WHATEVER THAN HIGHER-TAR CIGARETTES.

BUT I THINK, IF YOU REVIEW WHAT THE INDUSTRY WAS ALLOWED TO SAY AND WHAT IT DID SAY, YOU ALMOST INEVITABLY HAVE TO COME TO THE CONCLUSION THAT THE BELIEF, AWARENESS ON THE PART OF THE PUBLIC WAS TOTALLY DUE TO THE GOVERNMENT AND TO THE MEDICAL COMMUNITY, AND NOT FROM WHAT THE INDUSTRY ITSELF SAID OR THE WAY IT ADVERTISED ITS BRANDS.

Q. NOW, SIR, THERE WAS NOTHING THAT STOPPED THE INDUSTRY FROM ACTUALLY TESTING THE LOW-TAR CIGARETTES VERSUS THE HIGHER TAR AND NICOTINE CIGARETTES TO SEE WHETHER OR NOT THAT WAS ACTUALLY TRUE?

A. THAT WHAT WAS TRUE?

Q. ONE WAS BETTER THAN THE OTHER.

A. WHAT DOES "BETTER" MEAN?

Q. MORE HEALTHFUL, LESS HEALTH EFFECTS, LESS DISEASE.

A. I'M NOT AWARE OF ANY TESTS THAT EXIST EVEN TODAY

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THAT CAN DEMONSTRATE THAT.
Q. HAS PHILIP MORRIS EVER ATTEMPTED TO DO A TEST THAT WOULD SEE EITHER -- HOW LONG HAVE THE MARLBORO LIGHTS BEEN OUT?
A. 25 YEARS NOW.
Q. 25 YEARS.
SO WOULDN'T IT BE POSSIBLE, SIR, TO TAKE SOME OF PHILIP MORRIS' RESEARCH MONEY AND DEVISE AN ANALYSIS OF THE LAST 25 YEARS OF THE NUMBER OF PEOPLE WHO SMOKE LOW-TAR

0073

CIGARETTES, THE NUMBER OF PEOPLE WHO SMOKE THE HIGHER-TAR CIGARETTES, AND DO SOME KIND OF A RETROSPECTIVE STUDY TO SEE WHETHER OR NOT THE CIGARETTES THAT HAVE LOW TAR AND NICOTINE WERE ACTUALLY MORE HEALTHFUL THAN THE CIGARETTES THAT HAD HIGHER TAR AND NICOTINE?
A. IT'S OUT OF MY LEAGUE NOW, OTHER THAN I'M AWARE THAT THERE IS STILL TODAY A HUGE CONTROVERSY IN THE MEDICAL SCIENTIFIC COMMUNITY ON THAT SUBJECT OF EPIDEMIOLOGISTS WITH RESPECT TO THOSE STUDIES YOU ARE TALKING ABOUT.
I BELIEVE THAT THEY DISAGREE. SOME PEOPLE THINK THERE ARE CORRELATIONS. OTHER PEOPLE SAY NO, THAT IT DOESN'T MATTER.
I THINK YOU ARE ASKING FOR SOMETHING THAT JUST DOESN'T EXIST BASICALLY ANYWHERE.
Q. I'M ASKING YOU IF PHILIP MORRIS COULD SIT DOWN AND TAKE ITS OWN CIGARETTES AND DO AN EVALUATION, WHETHER IT BE A RETROSPECTIVE STUDY, OR A PROSPECTIVE STUDY, STARTING THE DAY YOU STARTED ON BOARD THERE FORWARD, OR STARTING TODAY, TO SEE WHETHER OR NOT IT IS MORE HEALTHFUL, MEANING LESS DISEASE, FOR PEOPLE TO SMOKE LOWER TAR AND NICOTINE CIGARETTES THAN IT IS TO SMOKE THE NO. 2 BRAND, THE MARLBORO HIGHER TAR AND NICOTINE CIGARETTE?
A. I DON'T KNOW THE ANSWER TO THAT.
Q. SIR, YOU DO KNOW THAT THERE HAS BEEN AN ANALYSIS AT PHILIP MORRIS AS TO WHETHER OR NOT PEOPLE WHO SMOKE MARLBORO LOWER TAR AND NICOTINE CIGARETTES ARE ACTUALLY GETTING LOWER TAR AND NICOTINE?
A. I REMEMBER ONE REPORT ON THAT.

0074

Q. AND THAT REPORT -- I BELIEVE IT'S PLAINTIFF'S 1-85 -- EXCUSE ME -- 4-87 -- THAT REPORT ACTUALLY CONCLUDED, DID IT NOT, THAT THE SMOKER OF THE MARLBORO LIGHT CIGARETTE, THE LOWER TAR AND NICOTINE CIGARETTE, ACTUALLY GOT THE SAME AMOUNT OF TAR AND NICOTINE AS YOUR NO. 2 BRAND, YOUR MARLBORO RED?
A. I HAVEN'T SEEN THE REPORT. YOU'RE ASKING ME TO AGREE TO SOMETHING I JUST HAVEN'T SEEN.
Q. YOU DON'T REMEMBER, SIR?
A. I DON'T REMEMBER.
Q. I WILL LEAVE THAT TO THE JURY.
NOW, SIR, YOU'VE BEEN INVOLVED IN --
YOU JUST SHOULD LET ME KNOW WHAT TIME YOU WANT TO TAKE THE BREAK. I'LL FIND A TIME. SO IF YOU WANT 3:15, JUST LET ME KNOW. I CAN ADJUST.
THE COURT: I'LL LET YOU KNOW.
MS. CHABER: Q. NOW, SIR, YOU HAVE BEEN INVOLVED ON THE RETAIL LEVEL.
I THINK YOU SAID YOU WERE A RETAIL SALESPERSON?
A. YES, I WAS.
Q. AND AS A RETAIL SALESPERSON, YOU'D ACTUALLY GO AND MAKE CALLS ON RETAIL SELLERS OF CIGARETTES?
A. YES.
Q. AND IT'S TRUE, IS IT NOT, SIR, THAT MARLBORO --

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STRIKE THAT. PHILIP MORRIS -- AND I DON'T WANT TO IMPLY ONLY YOU -- THAT BASICALLY THE CIGARETTE COMPANIES WORK WITH THE RETAILERS WITH RESPECT TO WHERE YOUR BRAND IS POSITIONED AND PLACED WITHIN THE STORE?

0075

A. YES.

Q. AND IN FACT, THERE ARE PROGRAMS OVER VARIOUS PERIODS OF TIME WITHIN PHILIP MORRIS, PROGRAMS OF INCENTIVES TO RETAILERS TO HAVE THE MARLBORO BRAND OF CIGARETTES POSITIONED SUCH THAT THE CONSUMER WOULD SEE THAT BRAND BEFORE THEY'D SEE OTHER BRANDS?

A. THAT IS ABSOLUTELY CORRECT.

Q. AND IN ADDITION TO THAT, THERE WOULD BE ACTUALLY INCENTIVES TO THE RETAILERS TO DISCOUNT MARLBORO CIGARETTES, WHERE PHILIP MORRIS WOULD SAY: "HOW ABOUT PUTTING THE MARLBOROS ON SALE FOR A TIME PERIOD AND WE'LL MAKE UP THE DIFFERENCE TO YOU OF WHAT YOU WOULD HAVE LOST IN REVENUE IF YOU'D SOLD IT AT THE HIGHER PRICE?"

A. NO, SIR. THAT'S NOT THE WAY IT WORKED.

BUT PHILIP MORRIS DID, FROM TIME TO TIME, RUN PRICE PROMOTIONS ON MARLBORO. BUT IT DIDN'T HAPPEN THE WAY YOU DESCRIBED IT AT ALL.

Q. BUT THERE WERE INCENTIVES TO THE RETAILERS NOT TO LOSE MONEY AT THEIR END OF IT; CORRECT?

A. IF YOU'D LIKE TO KNOW HOW IT WORKED, I WILL TELL YOU, BECAUSE IT WASN'T THE WAY YOU DESCRIBED IT.

Q. HOW ABOUT ANSWERING MY QUESTION FIRST?

A. THE ANSWER TO YOUR QUESTION IS NO.

Q. OKAY. PHILIP MORRIS DID WORK WITH RETAILERS TO REDESIGN STORES IN ORDER TO POSITION PHILIP MORRIS CIGARETTES FOR COMPETITIVE ADVANTAGE;, CORRECT?

A. YES.

Q. AND, SIR, THERE'S A THING CALLED PRODUCT

0076

PLACEMENT, IS THERE NOT?

A. WHAT DO YOU MEAN BY THAT?

Q. WELL, IT'S TRUE THAT BUSINESSES -- AND I WON'T LIMIT THIS AT THE MOMENT TO CIGARETTES -- BUT THAT BUSINESSES THAT SELL A PRODUCT MAY WANT TO PROVIDE THAT PRODUCT FOR FREE IF THEY THINK THAT THEY CAN GET SOME PUBLICITY FOR IT, SORT OF A BACKHANDED PUBLICITY; CORRECT?

A. LIKE IN MOVIES.

Q. THERE YOU GO. THAT'S AN EXAMPLE.

A. I KNEW WHERE YOU WERE HEADED.

Q. WELL, I HAD A FEELING YOU DID.

A. YES.

Q. BUT THEY DIDN'T ONLY DO IT IN MOVIES, DID THEY?

A. WHO?

Q. WELL, YOU'RE RIGHT. I DIDN'T ESTABLISH THAT YET.

PHILIP MORRIS DID HAVE SOME CONTRACTS FOR PRODUCT PLACEMENT OF ITS CIGARETTES IN MOVIES?

A. I'M AWARE THAT PHILIP MORRIS HAD A PROGRAM DURING, I THINK, THE 1970S -- I KNOW IT'S STOPPED NOW -- TO GET ITS PRODUCTS VISIBLE IN MOVIES. IF SOMEONE WERE SMOKING IN THE MOVIE, THEY'D SMOKE A MARLBORO OR PERHAPS THERE WOULD BE A SIGN ON A TRUCK THAT WOULD BE A MARLBORO SIGN. I'M AWARE OF THAT.

AND I WANT TO SAY THAT FIRST, BECAUSE I THEN WANT TO QUIBBLE. I'M NOT AWARE THERE WERE ANY CONTRACTS. I BELIEVE IT WAS JUST DONE.

Q. OH, NOT WRITTEN DOWN ON PAPER?

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A. I'VE NEVER SEEN A CONTRACT ON IT.
Q. YOU HAVEN'T SEEN A CONTRACT ON SUPERMAN, THE MOVIE?
A. NO, I HAVEN'T.
Q. YOU'VE NEVER SEEN THAT BEFORE?
A. NO. A CONTRACT?
I HAVE SEEN THE MOVIE.
Q. AND THE MOVIE HAD MARLBORO FEATURED IN IT?
A. FEATURED? MARLBORO WAS IN IT.
Q. AND IN FACT, LOIS LANE HAPPENED TO BE SMOKING MARLBORO, DIDN'T SHE?
A. I DON'T RECALL. BUT A MARLBORO WAS CERTAINLY VISIBLE IN THAT MOVIE.
Q. DO YOU KNOW WHETHER THE ORIGINAL LOIS LANE IN ANY SUPERMAN MOVIES HAD ACTUALLY BEEN A SMOKER?
A. I DO NOT KNOW.
Q. AND YOU'VE NEVER SEEN THIS CONTRACT?
A. NO.
Q. HOW ABOUT APOCALYPSE NOW? HAVE YOU SEEN A CONTRACT FOR APOCALYPSE NOW?
A. NO. I SAID I DON'T REMEMBER SEEING ANY CONTRACTS.
Q. BUT YOU DON'T DISAGREE THE SITUATION OCCURRED. YOUR DISAGREEMENT IS WHETHER OR NOT IT ACTUALLY EVER GOT INTO THE FORM OF A WRITTEN CONTRACT?
A. I'M NOT EVEN QUIBBLING OVER THAT. I'M JUST SAYING I'VE NEVER SEEN IT, AND THAT'S WHY I ANSWERED THE WAY I DID, WHICH IS SO YOU DON'T THINK I WAS TRYING TO SAY IT

0078

DIDN'T HAPPEN.
Q. IT DID HAPPEN?
A. YOU HAD ASKED THE ORIGINAL QUESTION IN THE CONTEXT OF TIME AND THERE WERE CONTRACTS FOR IT.
I'M JUST SAYING I DON'T KNOW THAT PART OF IT.
Q. MARLBORO WOULD DO THINGS LIKE SPONSOR TEAMS IN SPORTS EVENTS; CORRECT?
A. NO.
Q. NO MARLBORO RACING TEAMS, SIR?
A. I TAKE IT BACK. I TAKE IT BACK. YES.
Q. I WAS GOING TO SHOW YOU A PICTURE.
A. AN INDY RACING-SPONSORED PENSKEY TEAM. I'M SORRY.
Q. RIGHT. AND THE NAME MARLBORO PROMINENTLY DISPLAYED?
A. THE CAR HAD MARLBORO ON IT, YES.
Q. AND THE HATS THAT THE PIT WORKERS AND SO FORTH WORE HAD THE RED AND WHITE ROOF AND THE NAME "MARLBORO" ON IT?
A. YES.
Q. AND OF COURSE, THERE'S ALSO VIRGINIA SLIMS, WHICH SPONSORED TENNIS?
A. BUT NOT A TEAM; THAT IS, IT SPONSORED THE SERIES.
Q. SOMETIMES PHILIP MORRIS SPONSORED AN ACTUAL TEAM, CORRECT, IN A SPORT?
A. YES. I THINK MAYBE AUTO RACING IS THE ONLY ONE.
Q. AND THOSE ACTUAL EVENTS WOULD GET TELECAST ON TV?
A. SOMETIMES.

0079

Q. AND TO THE EXTENT THEY WERE TELECAST ON TV, THE NAME "MARLBORO" AND THE RED AND WHITE LOGO WOULD BE ABLE TO BE SEEN ON TELEVISION; CORRECT?
A. IF EVERYTHING WERE SUCH THAT THE CAMERA COVERED IT THAT WAY, YES.

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Q. WELL, IF THE CAR IS IN A RACE AND ON TV, UNLESS YOU ARE LOSING, IT'S A GOOD LIKELIHOOD THAT THE CAR WITH THE NAME "MARLBORO" ON IT IS GOING TO BE ON THE TV SCREEN?
A. I'M SMILING A LOT, BECAUSE HAVE YOU SEEN --
Q. YOU DIDN'T DO VERY WELL?
A. NO. IN FACT, THE TEAM WON SEVERAL CAMPAIGNS IN SEVERAL YEARS.
BUT HAVE YOU SEEN A TV BROADCAST WITH A CAR GOING 220 MILES AN HOUR ON THE TRACK AND HOW MUCH OF IT YOU CAN SEE? HAVE YOU SEEN THAT?
NOT A HECK OF A LOT. IT'S A BLUR.
Q. AND AFTERWARDS, WHEN THEY WIN THE RACE AND THEY GO UP AND THEY COLLECT THEIR -- WHATEVER THEY GET FOR WINNING THAT RACE, AND THEY'RE WEARING THEIR MARLBORO HAT AND THEIR MARLBORO JACKET, I TAKE IT YOU'D BE ABLE TO SEE IT THEN?
A. YOU'LL BE ABLE TO SEE THE LOGO, YES.
Q. AND CERTAINLY, VIRGINIA SLIMS' NAME ON A TENNIS TOURNAMENT THAT GOES ALL OVER THE UNITED STATES, THE NAME "VIRGINIA SLIMS" WOULD BE OUT THERE?
A. WHERE?
Q. OUT THERE IN THE PUBLIC.
A. WELL, YOU ARE TALKING ABOUT TV. BEFORE YOU WERE

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TALKING ABOUT TV, YOU WERE TALKING ABOUT THE ARENA.
Q. WELL, LET'S START WITH THE ARENA FIRST.
A. DEFINITELY VISIBLE IN THE ARENA. THERE WOULD BE A BANNER THAT SAID "THE VIRGINIA SLIMS TOUR."
Q. AND THAT WAS SOMETIMES BROADCAST ON TV?
A. SELDOM. BUT IF IT WERE, VIRGINIA SLIMS WORKED QUITE A BIT WITH THE NETWORK STATIONS TO MOVE THE BANNERS INTO A POSITION WHERE THEY WOULD NOT APPEAR ON TV.
Q. HOWEVER, IT WOULD BE CALLED THE VIRGINIA SLIMS TENNIS TOURNAMENT, WOULD IT NOT?
A. OVER THE LAST SIX TO THE 10 YEARS, MY MEMORY IS THAT THE NETWORKS DID NOT CALL IT THAT. THEY WOULD JUST SAY THE WOMEN'S TENNIS TOURNAMENT. IT'S NOT MY MEMORY THAT IT SAID VIRGINIA SLIMS.
ESPN CABLE MIGHT REFER TO IT AS THE VIRGINIA SLIMS OF MIAMI, BUT THERE WAS NO VIRGINIA SLIMS TENNIS TOURNAMENT. IT HAD NOTHING TO DO WITH TELEVISION, NOTHING. AS A CONCLUSION, IT WAS NOT ABOUT TELEVISION.
Q. A BALLPARK IS A PLACE THAT I BELIEVE YOU MENTIONED THAT YOU MIGHT HAVE A LOGO UP?
A. ADVERTISING SIGNS.
Q. AN ACTUAL ADVERTISING SIGN?
A. A GREAT SIGN IN CANDLESTICK PARK.
Q. YES. PROBABLY --
A. 3COM NOW.
Q. PROBABLY VISIBLE WHEN THE GAME IS BEING BROADCAST ON TV?
A. IT DEPENDS. IN THAT STADIUM, AS I RECALL, IT WAS

0081

NOT VISIBLE DURING BASEBALL TELECASTS AT ALL, AND IT WAS NOT VISIBLE DURING FOOTBALL TELECASTS. AND IT WOULD BE VISIBLE IF A FIELD GOAL OR EXTRA POINT WERE KICKED AT THAT END OF THE STADIUM.
AND THE REASON I KNOW THAT IS THAT THE GOVERNMENT CAME BACK AT PHILIP MORRIS ON THE LOCATION OF SOME OF ITS SIGNS, AND THEY WERE MOVED.
Q. AND WHAT YEAR WAS IT THAT HAPPENED?
A. FOUR OR FIVE YEARS AGO.
Q. BUT UP TO --

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A. THREE, FOUR YEARS AGO.
Q. EXCUSE ME. BUT UP UNTIL THREE OR FOUR YEARS AGO WHEN THE GOVERNMENT CRACKED DOWN ON YOU ACTUALLY HAVING THE MARLBORO SIGN VISIBLE ON TV DURING A SPORTS GAME, MARLBORO AND PHILIP MORRIS DID THAT, DID THEY NOT?
A. THERE'S NOTHING WRONG WITH THAT.
Q. I DIDN'T ASK YOU IF THERE WAS ANYTHING WRONG. I JUST ASKED --
A. THEY WERE NOT BOUGHT TO BE ON TV. THEY WERE BOUGHT BECAUSE THEY WERE GOOD STADIUM SIGNS.
Q. OKAY. SO YOU'D GET ALL THE PEOPLE THAT WERE AT THE STADIUM SEEING IT, AND THEN YOU'D GET WHOEVER WATCHED IT ON TV?
A. THAT WAS NOT PART OF THE CALCULATION OF WHY THEY WERE BOUGHT IS WHAT I'M SAYING.
Q. IT'S NOT PART OF THE CALCULATION AS TO WHERE THEY WERE PLACED?
A. NO. THERE WERE PLENTY OF SIGNS IN STADIA THAT

0082

NEVER GOT ON TV.
Q. SO WHEN THE GOVERNMENT CRACKED DOWN ON IT, IT WAS JUST BECAUSE, COINCIDENTALLY, YOU HAD A SIGN OR TWO THAT WAS PLACED SO THAT IT COULD BE SEEN ON TELEVISION?
A. IN FACT, DON'T HOLD ME TO THE EXACT NUMBER, BUT I BELIEVE WHEN THE GOVERNMENT -- FEDERAL TRADE COMMISSION LOOKED AT THAT STUDY, I THINK THEY HAD PHILIP MORRIS MOVE THREE SIGNS.
AND PHILIP MORRIS HAD, AT THAT POINT, 28 TO 32 SIGNS AROUND THE COUNTRY. SO IT WOULD BE LIKE 10 PERCENT OF THE SIGNS THE GOVERNMENT FELT WERE IN A POSITION THAT GOT TV EXPOSURE.
Q. NOW, SIR, YOU MENTIONED ABOUT BILLBOARDS.
CAN YOU GIVE US AN IDEA OF THE AMOUNT OF MONEY THAT IS SPENT FOR PUTTING UP BILLBOARDS OF CIGARETTE ADVERTISEMENT FOR PHILIP MORRIS?
A. THE PHILIP MORRIS COMPANY, NOT MARLBORO BUT THE WHOLE COMPANY, BILLBOARD ADVERTISING EXPENDITURE YEARLY?
Q. RIGHT.
A. $130 MILLION.
Q. NOW, SIR, THAT $130 MILLION, HOW MANY BILLBOARD DOES THAT BUY?
A. WELL, THERE ARE DIFFERENT KINDS OF BILLBOARDS. SO I'D SAY THE ANSWER IS ABOUT 400, MAYBE 500 OF THE HIGHWAY BIG BILLBOARDS. AND THEN THERE ARE A LOT OF WHAT'S CALLED THREE-SHEET BILLBOARDS, WHICH ARE SMALLER ONES THAT HAVE WOODEN FRAMES AROUND THEM, AND THAT COULD BE ANYWHERE FROM -- MAYBE AROUND 1,000.

0083

Q. NOW, SIR, UP UNTIL AT LEAST THE LAST COUPLE OF YEARS, MAYBE A YEAR OR TWO, THERE WERE NO RESTRICTIONS -- EXCUSE ME -- THERE WERE NO CODES OR VOLUNTARY AGREEMENTS BY PHILIP MORRIS NOT TO PLACE BILLBOARDS NEAR SCHOOLS?
A. YES, THERE WERE.
Q. WHEN DID THAT GO INTO EFFECT, SIR?
A. I DON'T KNOW WHEN IT WENT INTO EFFECT, BUT I CAN TELL YOU THAT FOR MANY, MANY YEARS, PHILIP MORRIS HAD A POLICY OF NOT PLACING OUTDOOR SIGNS WITHIN 500 FEET OF SCHOOLS.
Q. SIR, DIDN'T THE CITY AND COUNTY OF SAN FRANCISCO AND OTHER COUNTIES AND STATES HAVE TO SUE YOU AND THE OTHER CIGARETTE MANUFACTURERS TO HAVE SIGNS KEPT AWAY FROM SCHOOLS?
A. I BELIEVE, ALTHOUGH YOU CAN CORRECT ME IF I'M

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WRONG, THAT THAT ISSUE WAS, FIRST OF ALL, NOT BECAUSE THERE WERE VIOLATIONS OF PHILIP MORRIS' POLICY ABOUT 500 FEET, BUT AN INTERPRETATION OF WHAT SIGNS WERE.

AND THEY -- SOME PEOPLE WANT TO CONSIDER SIGNS IN A RETAIL STORE, A POSTER IN A RETAIL STORE TO BE AN OUTDOOR SIGN, AND THERE ARE STORES WITHIN 500 FEET OF SCHOOLS.

Q. AND THAT YOU WOULDN'T HAVE WANTED TO HAVE RESTRICTED; CORRECT?

A. WELL, THERE WERE NO PROVISIONS TO RESTRICT IT, NO.

Q. AND THERE WAS NOTHING VOLUNTARILY DONE BY YOU OR ANY OTHER CIGARETTE MANUFACTURER TO RESTRICT THE PLACEMENT OF SIGNS IN RETAIL STORES?

0084

A. BASICALLY NOT.

Q. LET ME FIND A BINDER.

THE WITNESS: YOUR HONOR --

THE COURT: I THINK THE WITNESS -- DO YOU WANT TO TAKE A BREAK?

THE WITNESS: NATURE CALLS.

MS. CHABER: THAT'S FINE WITH ME.

THE COURT: IT'S THE RIGHT TIME TO DO IT.

THE WITNESS: THANK YOU.

THE COURT: LET'S JUST TAKE A RECESS UNTIL 3:15, JURORS, A 20-MINUTE RECESS UNTIL 3:15. PLEASE CONTINUE TO FOLLOW THE ADMONITION AND WE'LL SEE YOU BACK AT 3:15.

(RECESS TAKEN FROM 2:55 TO 3:18 P.M.)

THE COURT: OKAY. WE'RE BACK ON THE RECORD. YOU MAY PROCEED.

MS. CHABER: Q. I THINK, JUST BEFORE WE TOOK THE BREAK, I WAS LOOKING FOR SOMETHING, AND I WAS GOING TO ASK YOU ABOUT RETAIL.

A. YES.

Q. SO WE'LL GET BACK TO WHERE WE WERE. I'M LOSING MY VOICE.

I'M GOING TO SHOW YOU EXHIBIT 7 -- EXCUSE ME -- 19-7-P AS IN PAUL, WHICH IS IN EVIDENCE IN THIS CASE.

AND I WANT TO ASK YOU, SIR, ISN'T IT TRUE THAT MARLBORO IN ITS RETAIL PROGRAM DID NOT PROHIBIT OR IN ANY WAY PREVENT STORES THAT SOLD CANDY FROM SELLING CIGARETTES?

A. BASICALLY, ANY STORE THAT WANTED TO SELL CIGARETTES AND HAD A LICENSE, A RETAIL LICENSE FROM THE

0085

STATE OR THE MUNICIPALITY, COULD SELL CIGARETTES, AND THAT MARLBORO -- WELL, MARLBORO DIDN'T CONTROL THE DISTRIBUTION.

DISTRIBUTORS SOLD TO THOSE STORES. SO IT'S NOT QUITE CORRECT TO SAY MARLBORO COULD CONTROL WHERE THOSE CIGARETTES WERE SOLD OR NOT.

Q. YOU MEAN TO TELL ME, SIR, THAT YOU, PHILIP MORRIS, COULD NOT SAY TO ITS DISTRIBUTORS: "WE DON'T WANT YOU TO DISTRIBUTE OUR CIGARETTES TO CANDY STORES, WHERE CANDIES ARE SOLD"?

A. PHILIP MORRIS HAD NO RIGHT TO SAY THAT.

Q. YOU COULDN'T DECIDE? YOU MEAN IT WAS TOTALLY LEFT UP TO --

A. THOSE STORES HAD A LICENSE FROM A MUNICIPALITY OR A STATE TO SELL CIGARETTES.

HOW COULD WE SAY: "YOU CAN'T SELL TO THEM"? IT'S NOT OUR ROLE.

Q. YOU WOULDN'T HAVE TO TELL THEM THEY COULDN'T SELL CIGARETTES. YOU, AS PHILIP MORRIS, COULD MAKE THE DECISION THAT YOUR CIGARETTES WOULD NOT BE SOLD IN STORES THAT SOLD CANDY.

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A. I THINK THAT IS NOT THE REAL WORLD. FIRST OF ALL, WE DIDN'T CONTROL IT.

SECONDLY, THEY HAD A LICENSE TO SELL CIGARETTES. IT WAS GRANTED BY THE CITY OR THE STATE.

WHO ARE WE TO TELL THEM THAT THEY CAN'T SELL OUR CIGARETTES?

Q. WELL, SIR, PHILIP MORRIS CAN MAKE POLICY DECISIONS THAT THEY DON'T WANT THEIR CIGARETTES SOLD IN

0086

LOCATIONS WHERE CHILDREN GO IN TO BUY CANDY, CAN'T THEY?

A. I SUPPOSE THEY COULD, BUT THEY COULDN'T EXECUTE IT. HOW ARE YOU GOING TO EXECUTE THAT?

Q. YOU MAKE CONTRACTS WITH YOUR DISTRIBUTORS, DON'T YOU?

A. NO, YOU DON'T. THEY JUST BUY CIGARETTES FROM US.

Q. AND CAN'T YOU SAY TO A DISTRIBUTOR: "YOU, DISTRIBUTOR, IF YOU DISTRIBUTE OUR PHILIP MORRIS CIGARETTES TO STORES WHERE CANDY IS SOLD AND CHILDREN GO INTO, WE'RE NOT GOING TO SELL TO YOU"?

A. BUT THERE ARE STATE LAWS THAT SAY THAT PEOPLE UNDER 18 ARE NOT ALLOWED TO BUY CIGARETTES. WHAT ROLE DOES PHILIP MORRIS HAVE IN THAT?

WE'RE -- I MEAN, YOUR QUESTION -- I'M SORRY FOR REACTING THIS WAY, BUT IT'S SO -- I DON'T WANT TO CHARACTERIZE IT. I'M JUST HAVING TROUBLE DEALING WITH IT.

YOU HAVE STATE LAWS, STATE LAWS THAT SAY MINORS CAN'T BUY CIGARETTES. THAT IS THE LAW OF THE STATE, THAT IT'S THE RESPONSIBILITY FOR THE RETAILER TO ENFORCE.

WHAT DIFFERENCE DOES IT MAKE IF CANDY IS IN THE STORE AND IF KIDS GO IN? THERE ARE STATE LAWS THAT SAY KIDS CAN'T BUY CIGARETTES AND IT'S THE RETAILERS' RESPONSIBILITY TO MAKE SURE THE LAWS ARE ENFORCED.

I DON'T GET IT. I'M SORRY.

Q. COULD PHILIP MORRIS MAKE A POLICY DECISION THAT IT WOULD NOT SELL TO PLACES WHERE CANDY WAS SOLD?

A. PHILIP MORRIS DOESN'T SELL TO THOSE PLACES. IT SELLS TO DISTRIBUTORS.

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Q. COULD PHILIP MORRIS MAKE A POLICY THAT IT WAS NOT GOING TO SELL TO DISTRIBUTORS THAT DISTRIBUTED THEIR CIGARETTES TO PLACES WHERE CHILDREN WOULD GO BECAUSE CANDY WAS SOLD?

A. OKAY. THEY COULDN'T. IT'S NOT ENFORCEABLE.

MR. OHLEMEYER: I OBJECT, YOUR HONOR.

THE WITNESS: IT MAY BE ILLEGAL.

MR. OHLEMEYER: I OBJECT. I THINK IT'S BEEN ASKED AND ANSWERED.

THE COURT: ALL RIGHT. WELL, IT CERTAINLY HAS NOW. I WILL LEAVE IN THE ANSWER.

MS. CHABER: Q. NOW, THE PLACEMENT OF THE SIGNS ON RETAIL STORES, THAT IS SOMETHING THAT PHILIP MORRIS CAN CONTROL, ISN'T IT?

A. IN SOME CASES, YES. IN OTHER CASES, NO. IT'S THE RETAILER'S STORE. HE SAYS WHERE HE'LL PUT STUFF AND WHERE HE WON'T.

Q. YOU GO IN -- PHILIP MORRIS GOES IN. YOU HAVE SALESPEOPLE HERE. I BELIEVE THE PERSON WHO IS SITTING HERE AS PHILIP MORRIS' CORPORATE REPRESENTATIVE WAS INTRODUCED AS CALIFORNIA SALES MANAGER. YOU HAVE PEOPLE THAT GO AND MEET WITH RETAILERS AND MAKE PROGRAMS WITH RETAILERS WITH RESPECT TO PRODUCT PLACEMENT?

A. PRODUCT PLACEMENT MEANS SOMETHING DIFFERENT THAN THE PRODUCT PLACEMENT WE TALKED ABOUT BEFORE.

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Q. PRODUCT PLACEMENT IS ACTUALLY WHERE THE CIGARETTE IS GOING TO BE PLACED WITHIN THE STORE?
A. WELL, MORE PRECISELY, WHERE A DISPLAY WOULD BE

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PLACED. IN MANY CASES, WHERE THE CIGARETTES ARE STORED IS NOT EVEN DISCUSSED.
Q. AND PHILIP MORRIS HAS NOTHING TO DO WITH HOW MANY SIGNS A STORE PUTS UP ABOUT MARLBORO CIGARETTES OR WHERE THOSE SIGNS ARE PLACED?
A. IT MAY HAVE SOMETHING TO DO WITH A MINIMUM NUMBER OF SIGNS TO RECEIVE MERCHANDISING PAYMENTS. IT WOULD HAVE LESS TO DO WITH WHERE THEY ARE OTHER THAN WHAT FIXTURES THAT I'M AWARE OF.
Q. AND PHILIP MORRIS AND ITS SALESPEOPLE CERTAINLY KEEP TRACK OF HOW WELL THE SALES ARE GOING IN PARTICULAR LOCATIONS, DON'T THEY?
A. NO.
Q. YOU JUST KEEP SELLING IT TO PEOPLE WHO AREN'T SUCCESSFUL IN MOVING IT?
A. THERE ARE APPROXIMATELY -- I BELIEVE THE NUMBER IS 400,000 STORES IN THE UNITED STATES THAT SELL CIGARETTES. PHILIP MORRIS HAS MERCHANDISING AGREEMENTS WITH ABOUT 120,000 OR ABOUT 25 PERCENT OF THE STORES.
IN THOSE STORES, PHILIP MORRIS DOES NOT TRACK WHAT ITS SALES ARE IN THAT STORE SPECIFICALLY AGAINST TOTAL SALES OR ANYTHING ELSE.
Q. CAN YOU DETERMINE WHETHER OR NOT THE POLICIES AND THE PLANS THAT YOU ARE MAKING WITH THE STORE AS TO WHERE YOUR DISPLAYS ARE PLACED OR WHAT THE DISPLAYS ARE, WHETHER THEY ARE SUCCESSFUL OR NOT?
A. WELL, "SUCCESSFUL" WOULD BE THAT THEY ARE WHERE THEY WERE AGREED TO BE, AND THAT WHEN THE SALESPERSON COMES

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IN THE NEXT TIME, IF IT WAS AGREED THAT THE MARLBORO DISPLAY WOULD BE NEXT TO THE CASH REGISTER, THAT IT'S THERE. IF IT'S NOT, IT'S A NONCOMPLIANCE TO THE AGREEMENT.
Q. WHAT IF THE CIGARETTES, NOT ONE OF THEM HAS BEEN SOLD FROM THE PLACEMENT?
A. DOESN'T MATTER.
Q. DOESN'T MATTER. YOU KEEP PLACING IT IN THAT SAME STORE IN THE SAME PLACE?
A. AS LONG AS THE STORE VOLUME, OVERALL CIGARETTE VOLUME WERE OF THE SIZE THAT THE PROGRAM CALLS FOR, A CERTAIN NUMBER OF CARTONS PER WEEK OF THE INDUSTRY, NOT NECESSARILY OF PHILIP MORRIS.
Q. SO YOU KEEP -- IT'S A PERCENTAGE FOR THE INDUSTRY?
A. WELL, IT'S NOT A PERCENTAGE OF. THE RETAILER HAS TO SAY, GENERALLY, HE SELLS 200 TO 250 CARTONS A WEEK OR 200 TO 300 CARTONS A WEEK. IT'S CATEGORIZED. IT'S STORE VOLUME.
Q. SIR, I SHOWED YOU AN EXHIBIT.
A. YES.
Q. IS THAT EXHIBIT DISTURBING TO YOU AS TO WHERE THE MARLBORO AD IS PLACED?
A. NOT PARTICULARLY. THE RETAILER MADE THE DECISION TO PUT THOSE SIGNS THERE.
Q. AND IT DOESN'T BOTHER YOU AS A COMPANY THAT DOESN'T WANT TO SELL TO CHILDREN THAT A MARLBORO CIGARETTE IS PLACED RIGHT UNDER THE WORD "CANDY"?
A. IT'S CERTAINLY NOT AN OPTIMUM PLACEMENT, BUT

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THOSE THINGS HAPPEN.

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AND AS I SAID, THE RETAILER CHOSE TO PUT THOSE BANNERS UP AND PROBABLY PICKED WHERE THE NINE SIGNS WENT.

AND AGAIN, ALL OF WHICH WOULD BE ACADEMIC OR SHOULD BE ACADEMIC IF THE RETAILER IN THE STATES UPHELD THE MINIMUM-AGE LAWS.

IF YOU SAID TO ME, "WOULD YOU LIKE TO GO OUT AND CHANGE THAT SIGN SO THAT IT'S NOT RIGHT UNDER 'CANDY,'" YES, I WOULD. IT HAPPENED.

Q. PHILIP MORRIS DOES THAT? DO THEY MONITOR THE STORES TO SEE IF THE SIGNS ARE BEING PLACED IN PLACES THAT MIGHT BE INVITING TO CHILDREN?

A. I CAN'T SAY THAT AS A MATTER OF POLICY, IT'S DONE, BUT I THINK PEOPLE ARE SENSITIVE TO THAT.

Q. BUT YOU KNOW OF NO POLICY THAT SAYS, YOU KNOW, "LET'S DO SOME RANDOM CHECKS ON OUR STORES TO SEE WHETHER OR NOT THEY'RE PLACING OUR SIGNS UNDERNEATH CANDY SIGNS"?

A. I'M NOT AWARE THAT THAT'S DONE.

Q. OR PLACING THEM IN A WAY THAT KIDS CAN GO INTO A STORE AND GRAB A LITTLE PACK FROM THE DISPLAY?

A. WHAT DO YOU MEAN "A LITTLE PACK"?

Q. I DON'T WANT TO GET INTO PACKINGS AND PACKS.

A. YOU MEAN GRAB A PACK OF CIGARETTES?

Q. THAT'S RIGHT.

A. THEY CAN GRAB A PACK FROM THE DISPLAY? SHOPLIFT?

Q. YES.

A. THAT IS WHY A NUMBER OF STORES HAVE GONE TO

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NONSELF-SERVICE, WHICH PHILIP MORRIS TODAY IS PROMOTING. "NONSELF-SERVICE" MEANS THAT PEOPLE CANNOT HAVE ACCESS TO THE CIGARETTES.

Q. THAT IS AS OF WHEN, SIR?

A. TWO YEARS AGO. PART OF THE ACTION AGAINST ACCESS PROGRAM.

Q. PART OF THE ACTION AGAINST ACCESS, SIR, CAME OUT OF THE FACT THAT PHILIP MORRIS WAS BEING SUED BY VARIOUS STATES AND BY VARIOUS CITIES AND MUNICIPALITIES OVER EXACTLY THAT, YOUTH ACCESS TO CIGARETTES?

A. I BEG TO DIFFER WITH YOU OVER ACCESS.

Q. YOU ARE SAYING THAT'S NOT TRUE OVER PROMOTION, SIR?

A. YOU SAID "OVER ACCESS."

Q. I'M ASKING A NEW QUESTION.

OVER PROMOTION, SIR?

A. OVER PROMOTIONS? THE STATES, PART OF THEIR CLAIM WAS THAT CIGARETTE COMPANY MARKETING PRACTICES MARKETED TO YOUTH?

Q. THAT'S CORRECT.

THE COURT: COUNSEL --

MR. OHLEMEYER: YOUR HONOR.

THE COURT: WAIT A MINUTE. YOU ARE NOT TESTIFYING HERE. YOU ARE NOT MAKING STATEMENTS ABOUT WHAT IS CORRECT OR NOT. LIMIT YOURSELF, PLEASE, TO THE QUESTIONS. WE'LL GET THE TESTIMONY FROM THE WITNESS.

MS. CHABER: Q. WAS THAT CORRECT, THAT THAT IS WHAT THOSE SUITS WERE ABOUT?

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A. THOSE SUITS WERE ABOUT MEDICAID RECOVERY. YOU KNOW THAT.

Q. WERE THEY ALSO, SIR, ABOUT TARGETING OR PROMOTING CIGARETTES TO YOUTH?

MR. OHLEMEYER: YOUR HONOR, I OBJECT TO THIS AS BEING WELL BEYOND ANYTHING RELEVANT TO THIS LAWSUIT.

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THE COURT: SHE IS ASKING WHETHER A CERTAIN ACTION WAS IN RESPONSE TO SOMETHING ELSE.
I'M GOING TO ALLOW THAT.
THE WITNESS: I DO NOT -- I DO NOT BELIEVE THAT THE ACTION AGAINST ACCESS PROGRAM WAS CREATED, WHICH I WAS PART OF -- I DO NOT BELIEVE THAT IT WAS CREATED IN REACTION TO THOSE LAWSUITS.
MS. CHABER: Q. IT WAS CREATED TEMPORALLY, OR IN TIME, IN RELATION TO THOSE LAWSUITS, WAS IT NOT?
A. THE DEVELOPMENT OF THAT PROGRAM, THE DEVELOPMENT OF IT -- IT TOOK A LONG TIME TO DEVELOP. THE DEVELOPMENT OF THAT PROGRAM STARTED BEFORE THOSE LAWSUITS.
Q. BEFORE THOSE LAWSUITS WERE EVER FILED?
A. I BELIEVE SO.
Q. SIR, YOU'RE FAMILIAR WITH MAGAZINE ADVERTISING?
A. I THINK I SAID I WAS, YES.
Q. AND PHILIP MORRIS STILL ADVERTISES IN MAGAZINES, DOES IT NOT?
A. YES, IT DOES.
Q. AND IT ADVERTISES IN MAGAZINES, SOME OF WHICH ARE MAGAZINES THAT YOUTH READ?
A. I TOLD YOU -- I SAID BEFORE, PHILIP MORRIS DOES

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NOT ADVERTISE IN ANY MAGAZINES WHERE 20 PERCENT OF THE CIRCULATION IS UNDER 18.
Q. BUT IF 19 PERCENT OF THE CIRCULATION IS YOUTH, PHILIP MORRIS WOULD ADVERTISE IN THOSE MAGAZINES?
A. WELL, IF 19 PERCENT IS UNDER 21. WE'RE DROPPING IT FROM 18 TO 21. SO IF 19 PERCENT IS UNDER 21, THEN SOME LESSER PERCENT WOULD BE UNDER 18.
Q. SO IT WOULD BE OKAY IF ONLY 15 PERCENT OF THE READERSHIP OF A MAGAZINE WERE MINORS?
A. THAT IS THE INDUSTRY GUIDELINES.
Q. AND THOSE ARE GUIDELINES THAT THE INDUSTRY IMPOSED UPON ITSELF; CORRECT?
A. THAT IS CORRECT.
Q. AND THE INDUSTRY COULD MAKE OTHER GUIDELINES WHERE THEY DETERMINED, "IF YOUTH READERSHIP WAS GREATER THAN 1 PERCENT, WE WON'T ADVERTISE IN THAT MAGAZINE"?
A. IT COULD, BUT THAT WOULD BASICALLY ELIMINATE MAGAZINE ADVERTISING.
Q. AND THIS IS NOT SOMETHING THAT PHILIP MORRIS ISN'T WILLING TO DO, IS IT?
A. NO.
Q. AND, SIR, I'D LIKE TO SHOW YOU -- LET ME GET THE NUMBERS. THOSE LAWSUITS WEREN'T CREATED PRIOR PLAINTIFF'S EXHIBIT 19-10 AND PLAINTIFF'S EXHIBIT 19-17. I WANT TO GIVE YOU THE ORIGINALS, ALTHOUGH COPIES ARE WHAT ARE ACTUALLY MARKED AS EXHIBITS.
THIS IS -- WHAT DID I SAY -- 10?
THE COURT: YOU SAID 19-10 AND 19-17.

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MS. CHABER: Q. THIS IS 19-10, SIR.
THAT'S A MARLBORO AD ON THE BACK, IS IT NOT?
A. YES, IT IS.
Q. YOU ARE LOOKING AT THE FRONT.
A. I ALREADY SAW THE BACK.
Q. I WANT YOU TO TURN IT OVER.
A. I JUST WANT TO SEE WHAT YEAR.
Q. I WANT TO ASK YOU SOME QUESTIONS ABOUT IT.
A. YES. IT'S A MARLBORO AD ON THE BACK.
Q. THAT IS THE BACK COVER --
A. YES.

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Q. -- OF A NATIONAL MAGAZINE?
A. YES.
Q. AND I THINK THAT ONE IS FROM 1966; IS THAT CORRECT?
A. THAT IS CORRECT.
Q. AND I WAS TALKING ON TOP OF YOU. I BETTER STAY AWAY FROM JUDITH THEN.
AND, SIR, I'M HANDING YOU GO 19-17, WHICH IS A JANUARY 23RD, 1970 LIFE MAGAZINE.
AND AGAIN, THAT IS A MARLBORO AD ON THE BACK COVER OF THE MAGAZINE?
A. YES.
Q. AND IT'S FAIR TO SAY, SIR, THAT IN NEITHER OF THOSE TWO ADS IS THERE ANY KIND OF WARNING OR ANY KIND OF STATEMENT THAT CIGARETTE SMOKING COULD CAUSE ANY KIND OF DISEASE?
A. THERE IS NOT IN EITHER OF THESE ADS THAT

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STATEMENT.
Q. AND, SIR, CAN YOU TURN OVER BOTH OF THOSE, 19-10 AND 17, AND CAN YOU TELL THE JURY WHERE THOSE MAGAZINES ARE DISTRIBUTED TO?
MAYBE I CAN HELP YOU.
A. AZUSA HIGH SCHOOL LIBRARY, AZUSA, CALIFORNIA. AND THE SAME THING.
Q. NOW, SIR, MARLBORO, I BELIEVE YOU SAID HAD MARLBORO GEAR AND THINGS LIKE YOU COULD SAVE MILES FOR; RIGHT?
A. YES
Q. I GET CONFUSED. I THOUGHT YOU COULD WALK A MILE FOR A CAMEL, BUT MARLBORO YOU HAD TO GO HORSEBACK.
IT'S NOT SAVING RIDING THINGS, IS IT? IT'S MILES?
A. IT'S MILES.
Q. OKAY. CAMEL HAS MILES ALSO?
A. I DON'T KNOW IF CAMEL HAS MILES.
Q. BUT MARLBORO, YOU SAVE MILES?
A. YOU GET FIVE MILES ON A PACK.
Q. OKAY. SO YOU BUY A PACK OF CIGARETTES, YOU GET FIVE MILES, AND YOU SAVE UP ALL THOSE MILES.
AND THEN YOU HAVE A CATALOG, AND YOU CAN BUY THINGS FROM THE CATALOG WITH THESE MILES?
A. WITH THOSE MILES, YES.
Q. WITH THOSE MILES.
YOU CAN'T USE CASH?
A. ACTUALLY, IN A COUPLE OF INSTANCES, YOU COULD.

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Q. IS THAT SOMETHING THAT SORT OF CHANGED NOW, WHERE YOU CAN ACTUALLY USE CASH RATHER THAN HAVE TO SAVE THE MILES?
A. NO. I THINK FAIRLY EARLY ON, THERE WAS USUALLY ONE ITEM IN THE CATALOG WHERE -- ACTUALLY, I REMEMBER WHERE YOU WOULD USE CASH FOR SOMETHING THAT WAS RATHER EXPENSIVE, LIKE -- I DON'T REMEMBER SPECIFICALLY, BUT LIKE A HIGH-QUALITY BICYCLE.
AND THE REASON WAS THAT TO GET IT, IF YOU HAD TO SAVE MILES TO GET IT, YOU COULDN'T DO IT IN THE TIME FRAME OF THE PROMOTION WITHOUT SMOKING SO MANY CIGARETTES THAT IT WOULD BE RIDICULOUS.
SO IT WAS AN EFFORT TO PROVIDE THE ITEM BUT NOT REQUIRE PEOPLE TO SMOKE -- HAVE TO SMOKE CIGARETTES IN THEIR EARS TO GET IT.
Q. OKAY. BUT THE MORE CIGARETTES SOMEONE SMOKED, IF

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THEY WERE SAVING MILES, THE MORE MILES THEY WOULD GET, AND THE BETTER ITEM THEY COULD BUY WITH IT?
A. THAT IS CORRECT.
Q. AND THESE ITEMS IN THE CATALOG WERE THINGS LIKE T-SHIRTS?
A. THERE WERE T-SHIRTS. THERE WERE USUALLY 25 TO 30 ITEMS IN A CATALOG.
Q. OKAY. AND ALL OF THE ITEMS THAT WOULD BE IN THE CATALOG WOULD HAVE THE NAME "MARLBORO" PROMINENTLY ON THEM?
A. NO. SOME OF THEM WOULD; SOME OF THEM WOULDN'T.
Q. THE ONES THAT DIDN'T WOULD GENERALLY HAVE THE COLORS OF THE RED AND WHITE OF MARLBORO?

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A. IT MAY. LIKE I REMEMBER, AT ONE TIME I THINK IT WAS ONE OF THE COLEMAN LANTERNS, LIKE THE OLD GAS LANTERN. THAT I DON'T THINK HAD MARLBORO ON IT. IT WAS PROBABLY RED.
Q. BUT LET'S TALK ABOUT THE JACKETS AND THE T-SHIRTS AND THE HATS AND THE SUITCASES.
ALL OF THOSE THINGS WOULD TEND TO HAVE THE NAME "MARLBORO" ON THEM?
A. AND IF NOT, THEY WOULD TEND TO BE RED.
Q. AND IF NOT, THEY WOULD TEND TO BE RED.
IN FACT, SOME OF THE PROMOTION OF MARLBORO IS DONE SOLELY WITH THAT RED AND WHITE IMAGE WITHOUT ANY WORDS; ISN'T THAT TRUE?
A. YES.
Q. AND THAT'S EVIDENCE THAT MARLBORO IS RECOGNIZED EASILY BY ITS LOGO, EVEN WITHOUT ITS NAME?
A. I THINK IT IS, YES.
Q. AND, SIR, THAT'S TRUE, THAT MARLBORO USES THAT SAME LOGO AROUND THE WORLD, DOESN'T IT?
A. EVERYWHERE BUT CANADA.
Q. AND IT'S NOT USED IN CANADA BECAUSE OF SOMETHING THE GOVERNMENT DID THERE?
A. NO. BECAUSE PHILIP MORRIS DOESN'T OWN MARLBORO IN CANADA.
Q. BUT ELSEWHERE, PHILIP MORRIS DOES?
A. YES.
Q. AND IT'S TRUE THAT MARKETS OUTSIDE OF THE UNITED STATES HAVE BEEN SOMETHING THAT MARLBORO HAS BEEN INTERESTED IN?

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A. INTERESTED IN?
Q. YES.
A. DONE BUSINESS?
Q. DONE BUSINESS.
IN OTHER COUNTRIES SELLING CIGARETTES?
A. YES.
Q. PROMOTING CIGARETTES?
A. YES.
Q. ADVERTISING CIGARETTES?
A. WHERE ALLOWED.
Q. YOU ARE ALLOWED?
A. NO, NOT EVERYWHERE.
Q. OH, PLACES THAT YOU ARE NOT ALLOWED, YOU DON'T DO IT?
A. CORRECT.
Q. PLACES THAT YOU ARE ALLOWED, YOU DO DO IT?
A. CORRECT.
Q. AND IF YOU'RE NOT REQUIRED TO PUT A WARNING ON, YOU DON'T PUT ONE ON; CORRECT?
A. I'M NOT SURE ABOUT THAT. I BELIEVE THAT THE HEALTH WARNINGS ARE ON ALL PACKS EXPORTED OUT OF THE UNITED

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STATES.
PHILIP MORRIS COMPLIES WITH THE LOCAL LAWS WHEREVER IT DOES BUSINESS, WHICH DO DIFFER FROM COUNTRY TO COUNTRY.
Q. AND IF THE LOCAL LAW DOESN'T REQUIRE PHILIP MORRIS TO PUT WARNINGS, FOR EXAMPLE, ON ITS ADVERTISING, IT DOESN'T DO IT OUTSIDE OF THIS COUNTRY?

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A. IF WE ARE NOT REQUIRED IN THAT COUNTRY, WE WOULD NOT, ALTHOUGH LIKE TIME INTERNATIONAL WOULD HAVE -- ANYTHING THAT WENT TO MORE THAN ONE COUNTRY WOULD HAVE A HEALTH WARNING.
Q. AND IN THE 1960S, THE BEGINNING 1960S, 1960, '61, '62, ALL THE WAY UP TO WHAT, '66, THERE WERE NO HEALTH WARNINGS ON CIGARETTES?
A. ON THE PACK?
Q. ON THE PACK.
A. I BELIEVE THAT THE HEALTH WARNING CAME ON THE PACK IN '66 OR '67. I FORGET THE EXACT YEAR.
Q. AND THAT WAS SOMETHING THAT DIDN'T SAY: "PHILIP MORRIS SAYS THAT THESE CIGARETTES MAY BE HAZARDOUS TO YOUR HEALTH"; CORRECT?
A. NO. IT SAID THE SURGEON GENERAL.
Q. YES. IT SAID: "THE SURGEON GENERAL SAYS THIS MAY BE HAZARDOUS TO YOUR HEALTH"; CORRECT?
A. I'M NOT SURE. I DON'T THINK THAT'S EXACTLY WHAT IT SAID.
Q. DO YOU KNOW?
A. I BELIEVE IT SAID: "THE SURGEON GENERAL HAS DETERMINED THAT CIGARETTE SMOKING MAY BE HAZARDOUS TO YOUR HEALTH."
WHATEVER IT WAS, IT WAS THE GOVERNMENT-MANDATED WARNINGS, THE EXACT LANGUAGE.
Q. IN 1966, SIR, PHILIP MORRIS COULD HAVE PUT STRONGER LANGUAGE ON THEIR PACKS OF CIGARETTES, COULDN'T THEY?

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A. I SUPPOSE PHILIP MORRIS COULD HAVE DONE THAT IN 1952. IT'S A QUESTION -- IT'S VERY EASY TO LOOK BACK -- WITH TODAY'S ACCEPTANCE OF THE HEALTH DANGERS AND RISKS OF SMOKING, IT'S VERY EASY TO LOOK BACK AND SORT OF SECOND-GUESS WHO DID WHAT, WHEN.
BUT THE FACT IS, THIS WAS A PUBLIC POLICY ISSUE, AND I THINK PHILIP MORRIS' EVALUATION OF THE STATE OF KNOWLEDGE WAS WHAT IT WAS.
A SCIENTIST -- I DON'T KNOW. I WASN'T PRIVY. I WAS A TRAINEE AT THAT POINT.
I DO KNOW THAT THE GOVERNMENT SAID THAT CIGARETTE PACKS SHOULD HAVE HEALTH WARNINGS ON THEM AND PHILIP MORRIS PUT THEM ON.
COULD IT HAVE ON ITS OWN PUT ON STRONGER HEALTH WARNINGS? I'M NOT SURE IT COULD HAVE, ACTUALLY. YOU'D KNOW BETTER THAN I ABOUT THE LEGALITIES OF A COMPANY VIOLATING A GOVERNMENT ORDER BY PUTTING LANGUAGE OTHER THAN WHAT'S SPECIFIED, BUT I DON'T KNOW.
Q. WELL, SIR, THE GOVERNMENT WARNING IN THE 1960S UP TILL 1969, WASN'T THAT A MINIMAL STANDARD?
MR. OHLEMEYER: OBJECTION, YOUR HONOR. IT CALLS FOR A LEGAL CONCLUSION.
THE COURT: IF IT'S BEING OFFERED AS EVIDENCE OF LAW, I'LL SUSTAIN.
MS. CHABER: Q. SIR, WITH RESPECT TO THE POLICY OF PHILIP MORRIS, DO YOU KNOW OF ANY POLICY OF PHILIP

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MORRIS UP TO TODAY THAT SAYS "WE WILL PUT WARNINGS ON OUR CIGARETTES IF THEY ARE NOT REQUIRED BY THE GOVERNMENT"?

MR. OHLEMEYER: SAME OBJECTION, YOUR HONOR.
MS. CHABER: POLICY.
THE COURT: WHAT IS THE LEGAL GROUNDS? STATE THE LEGAL GROUNDS.
MR. OHLEMEYER: THE LEGAL GROUNDS ARE LACK OF RELEVANCE.
THE COURT: SUSTAINED.
MS. CHABER: Q. SIR, I THINK YOU TALKED ABOUT -- MAYBE I'M ON THE FOURTH STORY, THAT HAD TO DO WITH A TAX INCREASE IN NEW YORK?
A. MARLBORO LIGHTS.
Q. MAYBE I SHOULD ASK IT THIS WAY: WHAT STORY WAS THE MARLBORO FRIDAY STORY?
A. STORY FIVE.
Q. OKAY.
A. THE LAST ONE.
Q. THE LAST ONE. ALL RIGHT. OKAY.
IF I UNDERSTOOD WHAT YOU SAID CORRECTLY, MARLBORO REDUCED THE PRICE OF MARLBORO CIGARETTES BECAUSE THERE WAS A TAX PLACED ON CIGARETTES.
NO. I'M GETTING TWO THINGS MIXED UP?
A. YES, YOU ARE.
Q. MARLBORO FOR NO REASON REDUCED THE MARLBORO CIGARETTES?
A. NO.
Q. OKAY. HAD IT HAD DISCOUNT BRANDS?
A. CORRECT.
Q. NOW, WHO MANUFACTURES THESE DISCOUNT BRANDS?

A. THE DISCOUNT BRANDS ARE MANUFACTURED BY THE FIVE MAJOR MANUFACTURERS AND A COUPLE OF SMALLER COMPANIES.
Q. OKAY. SO PHILIP MORRIS ACTUALLY HAS OUT THERE DISCOUNT BRANDS, DOESN'T IT?
A. YES, IT DOES.
Q. OKAY. SO SOME OF THIS COMPETITION, YOU WERE TALKING ABOUT DISCOUNT BRANDS TAKING AWAY FROM MARLBORO MARKET SHARE.
PHILIP MORRIS WAS GAINING SOME OF THAT WITH ANOTHER BRAND; CORRECT?
A. SOME OF THE SHARE THAT MARLBORO WAS LOSING WAS GOING TO PHILIP MORRIS DISCOUNT BRANDS, YES.
Q. AND WHAT BRANDS ARE PHILIP MORRIS DISCOUNT BRANDS?
A. AT THAT POINT IN TIME, IT WOULD HAVE BEEN ALPINE AND BASIC IS THE BIG BRANDS, CAMBRIDGE AND BASIC.
Q. AND TODAY, BASIC IS STILL AVAILABLE?
A. YES.
Q. ALPINE?
A. STILL AVAILABLE.
Q. STILL AVAILABLE?
A. HARD TO FIND, BUT STILL AVAILABLE.
Q. ANY NEW ONES?
A. NOT THAT I'M AWARE OF.
Q. YOU KNOW THERE'S SOME OTHER NAMES, LIKE GNC?
A. GPC. THAT'S BROWN & WILLIAMSON'S DISCOUNT BRAND.
Q. SO --
A. DORAL, R.J. REYNOLDS' DISCOUNT BRAND.

Q. EACH OF THE MAJOR COMPANIES, IN ADDITION TO HAVING THEIR NAME BRANDS, HAVE THESE MORE OR LESS GENERIC OR

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DISCOUNT BRANDS; CORRECT?
A. JUST FOR THE RECORD, NO, THAT'S NOT CORRECT.
LORILLARD ACTUALLY DID NOT HAVE A DISCOUNT BRAND FOR MANY YEARS.
Q. BUT THEY DO NOW?
A. YES. THE OVERALL ASSUMPTION WAS RIGHT. ONE TECHNICAL OMISSION.
Q. OKAY. SO OTHER THAN LORILLARD, THE MAJOR MANUFACTURING COMPANIES HAD DISCOUNT BRANDS?
A. RIGHT.
Q. AND PHILIP MORRIS DETERMINED THAT THESE DISCOUNT BRANDS, INCLUDING THEIR OWN DISCOUNT BRANDS, WERE CUTTING INTO THEIR SHARE OF MARLBORO?
A. MARLBORO'S SHARE OF MARKET, YES.
Q. AND SO YOU LOWERED THE PRICE?
A. TO MAKE MARLBORO MORE COMPETITIVE.
Q. AND SO DID ALL OF THE STORES THEN THAT HAD THESE MARLBORO CIGARETTES IN THERE, DID THEY LOSE ALL THIS MONEY THAT THEY THOUGHT THEY WERE GOING TO BE GETTING AS A RESULT OF SELLING MARLBOROS?
A. NO. WELL, ASK THE QUESTION MORE SPECIFICALLY.
THERE ARE ABOUT FOUR WAYS TO INTERPRET WHAT YOU MEAN BY THAT. I'M SORRY.
Q. THAT IS A GOOD QUESTION OF MINE, IF THERE'S ONLY FOUR WAYS.
A. IT'S GOOD I'M NOT ANSWERING UNTIL YOU ASK IT

0104

SPECIFICALLY.
Q. LET ME TRY AGAIN THEN.
A. OKAY. HOW MUCH WAS THE PRICE OF MARLBORO ON APRIL 13TH?
Q. WAIT. I GET TO ASK THE QUESTIONS. I HAVE TO ASK YOU, BECAUSE YOU WOULD KNOW.
A. APRIL, FRIDAY THE 13TH.
Q. WAS IT FRIDAY THE 13TH THAT THAT HAPPENED?
A. I THINK IT WAS, ACTUALLY.
Q. WHY?
A. I'M NOT SURE.
Q. OKAY. SO FRIDAY, THE 13TH, 1993, MARLBORO SAYS: "WE'RE GOING TO REDUCE THE PRICE OF MARLBORO CIGARETTES" --
A. 20 CENTS A PACK.
Q. -- "20 CENTS A PACK"?
A. AT WHOLESALE.
Q. AT WHOLESALE?
A. WE SELL TO WHOLESALERS.
Q. AND THEN, THE WHOLESALER SELLS TO THE RETAILER BASED ON, I WOULD ASSUME, THE COST OF WHAT THEY'RE PAYING?
A. PLUS A PROFIT.
Q. PLUS A PROFIT. YES.
WELL, EVERYBODY DOWN THE CHAIN WANTS TO MAKE A LITTLE BIT OF MONEY.
I MEAN, THE RETAILER DOESN'T SELL THE CIGARETTE FOR THE SAME PRICE THAT HE GETS IT FROM THE WHOLESALER; RIGHT?
A. IF HE DID, HE'S NOT GOING TO BE IN BUSINESS LONG.

0105

Q. RIGHT. THE WHOLESALER DOESN'T SELL THE CIGARETTE AT THE SAME PRICE THAT YOU GIVE IT?
A. CORRECT.
Q. SO YOU REDUCED THE PRICE.
DID THE PRICE GET REDUCED TO THE CONSUMER?
A. YES.
Q. AND WHO BORE THE COST OF THAT PRICING?

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A. PHILIP MORRIS.
Q. SO YOU MADE SURE WHEN YOU REDUCED THE PRICE OF THE CIGARETTES THAT NEITHER THE RETAILER NOR THE WHOLESALER WERE GOING TO GET HURT BY THAT?
A. SPECIFICALLY, WHAT WAS DONE WAS THAT ANY INVENTORY THAT THE WHOLESALER HAD THAT HE HAD PAID THE 20 CENTS A PACK HIGHER, WHICH NOW THERE WAS A LOWER SELLING PRICE, HE WAS REBATED HIS INVENTORY TIMES 20 CENTS A PACK. AND THAT WAS DONE FOR RETAILERS ALSO.
Q. AND THIS WAS A PERMANENT PRICE REDUCTION OF MARLBORO?
A. IT WAS A ONE-TIME PRICE REDUCTION THAT LOWERED ITS SELLING PRICE.
Q. OKAY. AND DOES MARLBORO TODAY SELL MARLBORO -- I MEAN, EXCUSE ME -- DOES PHILIP MORRIS TODAY SELL MARLBORO CIGARETTES AT THE EQUIVALENT PRICE TO THE DISCOUNT BRANDS THAT IT SELLS?
A. NO, IT DOES NOT.
Q. AND SINCE THEN, THERE HASN'T BEEN ANOTHER LOWERING OF MARLBORO PRICES, HAS THERE?
A. NO. MARLBORO PRICING -- THE CIGARETTE PRICES ARE

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WAY, WAY UP SINCE THE PERIOD OF TIME WE'RE TALKING ABOUT BECAUSE OF TAXES.
Q. AND THE PROFITS ARE UP AS WELL?
MR. OHLEMEYER: EXCUSE ME, YOUR HONOR. I OBJECT TO THAT AS BEING IRRELEVANT.
THE COURT: SUSTAINED.
MS. CHABER: Q. NOW, I WANT TO GO BACK FOR A MINUTE TO THESE MILES THAT PEOPLE ARE SAVING FOR THE GEAR.
A. YES.
Q. YOU SAID THAT YOU HAVE TO BE 21 YEARS OLD IN ORDER TO GET THE GEAR?
A. IN ORDER TO PARTICIPATE IN THAT PROMOTION, AND TO BE ON THE PHILIP MORRIS DATABASE FOR DIRECT MARKETING, YOU HAVE TO DO TWO THINGS. YOU HAVE TO FILL OUT A CARD AND SEND IT TO PHILIP MORRIS THAT SAYS TWO THINGS. ONE, IT ATTESTS TO THE FACT THAT YOU'RE OVER 21 YEARS OF AGE. AND YOU SIGN YOUR NAME SAYING THAT YOU ARE WILLING TO RECEIVE CIGARETTE PROMOTIONAL PROGRAMS AND MATERIALS.
Q. OKAY. NOW, LET ME ASK YOU A QUESTION.
DO YOU REQUIRE ANYTHING BESIDES A PERSON'S STATEMENT AND A SIGNATURE?
A. NO.
Q. NO BIRTH CERTIFICATE, NOTHING ALONG THOSE LINES SO THAT YOU KNOW THAT THE PEOPLE WHO ARE SENDING IN FOR THE MARLBORO JACKET, THE MARLBORO T-SHIRT, THE MARLBORO HAT, ARE ACTUALLY OVER 21 YEARS OF AGE?
A. NO. THAT IS A WEAKNESS IN THE PROGRAM.
BUT AGAIN, IT'S 21, NOT 18. SO YOU HAVE THREE

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YEARS OF ABOVE MINORS, WHO ALSO CAN PARTICIPATE, BUT THAT IS AN INHERENT WEAKNESS IN THE PROGRAM, WHICH IS DEMANDING.
ON THE OTHER HAND, OF COURSE, YOU CAN GET A PHOTOSTAT OF A DRIVER'S LICENSE THAT IS BOGUS TOO. YOU CAN GET A PHOTOSTAT OF A BIRTH CERTIFICATE THAT'S BOGUS.
BUT AS PART OF ACTION AGAINST ACCESS, WE LOOKED AT GETTING VERIFICATION OF THOSE CARDS, AND WE'RE GOING TO IMPLEMENT THAT.
Q. SO THAT'S SOMETHING THAT HAS YET TO HAPPEN. BUT UP UNTIL THIS TIME PERIOD, BASICALLY, IF A KID BOUGHT A PACK OF CIGARETTES, IT COULD SAVE MARLBORO MILES IF IT WAS WILLING TO WRITE ON A PIECE OF PAPER: "I'M 21 YEARS OLD AND

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HERE IS MY SIGNATURE"?
A. YES. ALTHOUGH -- LET ME JUST ADD ONE THING, THAT WE SPENT A LOT OF MONEY REVALIDATING THAT DATABASE, AND WE WOULD ACTUALLY GO OUT ON A REGULAR BASIS AND CALL PEOPLE ON THE DATABASE TO VERIFY THAT WHO THEY WERE, THEIR ADDRESS, THEIR AGE.

AND WE CAUGHT A NUMBER OF KIDS ON THE LIST BY TALKING TO PARENTS WHEN WE CALLED UP, AND WE TOOK THEIR NAMES OFF. WE ALSO TOOK NAMES OFF WHEN KIDS WOULD GET A T-SHIRT, AND THE PARENTS WOULD CALL AND SAY: "HOW DID MY KID GET THE SHIRT?"

WE SAID, "THEY SIGNED A CARD."

WE SENT THEM A COPY OF THE CARD THAT THE KID HAS SIGNED. WE TAKE THEIR NAMES OFF THE LIST.

I ADMITTED THAT WAS AN INHERENT WEAKNESS IN THE PROGRAM OF NOT, YOU KNOW, DEMANDING DNA EVIDENCE, AND WE

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COULD BE CRITICIZED FOR THAT.

THERE WAS A COST TO THAT. IT WOULD HAVE COST ALMOST $100 MILLION JUST ON THAT DATABASE TO DEAL WITH PHOTO ID'S. AT THE END OF THE DAY, YOU DIDN'T KNOW IF THE PHOTO ID WAS VALID.

WHAT WE DID IS WE VALIDATED. INSTEAD, WE CALLED BACK AND TALKED TO PEOPLE IN THE HOUSEHOLD WHERE THAT CARD HAD COME FROM AND WE DID FIND A NUMBER OF KIDS ON THE LIST. WE TOOK THEM OFF.

AND WE GOT A NUMBER OF COMPLAINTS FROM PARENTS AND TOOK THE KIDS OFF THE LIST. IT DID HAPPEN. I CAN'T PRETEND IT DIDN'T.

Q. YOU STILL DON'T DO THAT ON A DAILY BASIS WHERE YOU VALIDATE ALL THE CARDS THAT COME IN AND YOU CALL THE PARENTS AND SEE WHETHER OR NOT THE PERSON IS TRULY OVER THE AGE OF 21 OR OVER THE AGE OF 18?

A. IT'S OVER THE AGE OF 21. I DON'T KNOW WHETHER IT'S DONE DAILY, BUT IT'S DONE REGULARLY.

Q. AND SIR, WHEN THESE T-SHIRTS GET SENT OUT TO PEOPLE, YOU EXPECT PEOPLE TO WEAR THEM; RIGHT?

A. YES.

Q. I MEAN, WHO WANTS A T-SHIRT TO KEEP IN THE DRAWER AND THE HATS AND THE JACKETS? YOU EXPECT THAT THEY'RE GOING TO BE OUT THERE ADVERTISING YOUR PRODUCTS; CORRECT?

A. THEY ARE GOING TO BE WORN.

Q. AND PEOPLE ARE GOING TO SEE ON A CONTINUAL BASIS THE RED AND WHITE ROOF OF MARLBORO OR THE NAME "MARLBORO"; CORRECT?

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A. TO THE DEGREE THAT PEOPLE WEAR THEM AND ARE OUT AND VISIBLE TO OTHER PEOPLE, OF COURSE, YES.

Q. AND THERE'S BEEN ANALYSIS, IF YOU PUT DOWN THAT LOGO WITHOUT A NAME ON IT, THAT THE RECOGNITION OF WHAT PRODUCT THAT IS IS EXTREMELY HIGH; CORRECT?

A. I DON'T KNOW IF IT'S EXTREMELY HIGH. IT'S DARN GOOD.

Q. AND, SIR, THERE'S NOTHING ON THIS T-SHIRT THAT SAYS "MARLBORO" THAT HAS A WARNING ON IT, DOES IT?

A. NO. THE GOVERNMENT -- THE GOVERNMENT SAID -- AS PART OF THE HEALTH WARNING LEGISLATION, CONGRESS SAID THAT ANYTHING THAT WAS A PERMANENT ITEM AS OPPOSED TO AN AD OR A PROMOTIONAL PIECE DIDN'T REQUIRE A HEALTH WARNING. SO IT WAS A GOVERNMENT RULE THAT IT DIDN'T HAVE TO BE ON --

Q. A PERMANENT ITEM?

A. LIKE AN ASHTRAY. YOU CAN PUT "MARLBORO" ON AN ASHTRAY AND NOT PUT THE HEALTH WARNING. IT'S A PERMANENT

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ITEM AS OPPOSED TO A TEMPORARY ITEM.
Q. AND I SUPPOSE, IF YOU WANTED TO, THOUGH, YOU COULD PUT THE WARNING ON. I MEAN, THERE'S NOTHING IN THE GOVERNMENT RULES THAT SAYS YOU COULDN'T PUT THAT WARNING ON THIS NONPERMANENT ITEM?
A. YOU'D HAVE TO TALK TO LAWYERS WHO UNDERSTAND THE RULES BETTER THAN I DO. YOU'D BE IN VIOLATION OF A GOVERNMENT ORDER. THEY SHOULD KNOW WHAT YOU SHOULD PUT IT ON.
I DON'T KNOW IF THAT'S AN ANSWER TO YOUR QUESTION. I'M SORRY.

Q. I JUST WANT SEE IF I UNDERSTAND.
THAT'S HOW YOU INTERPRETED IT WHEN YOU WERE PRESIDENT AND CEO OF PHILIP MORRIS, WAS THAT YOU HAD TO PUT IT ON CERTAIN THINGS, AND OTHER THINGS YOU WERE NOT ALLOWED TO PUT IT ON?
A. YOU HAD TO PUT IT ON CERTAIN THINGS AND THE PROVISIONS BY THE GOVERNMENT OF WHAT IT SHOULD GO ON WERE VERY SPECIFIC. AND WE PUT IT ON THOSE THINGS. WE OBEYED THE LAW. WE DIDN'T HAVE TO PUT IT ON WINDBREAKERS.
Q. DO YOU KNOW OF ANY PROHIBITION OF PHILIP MORRIS PUTTING A WARNING ON A WINDBREAKER?
MR. OHLEMEYER: OBJECTION, YOUR HONOR. ASKED AND ANSWERED. ARGUMENTATIVE.
THE COURT: IF THOSE ARE OBJECTIONS, THEY ARE OVERRULED.
GO AHEAD.
THE WITNESS: I DO NOT KNOW OF A SPECIFIC PROHIBITION FROM DOING IT. I DO NOT KNOW THE CONSEQUENCES OF DOING SOMETHING THAT THE GOVERNMENT DIDN'T SPECIFY.
MS. CHABER: Q. AND IN ANY CASE, IT WASN'T PHILIP MORRIS' POLICY TO PUT IT ON ANYTHING OTHER THAN WHAT WAS SPECIFIED; CORRECT?
MR. OHLEMEYER: YOUR HONOR, I OBJECT ON THE BASIS OF RELEVANCE.
THE COURT: SUSTAINED.
MS. CHABER: Q. LET ME JUST ASK YOU ONE OR TWO QUESTIONS AND THEN STOP TALKING.
THE ADVERTISING CODE THAT YOU WERE TALKING ABOUT

EARLIER ON --
A. YES.
Q. -- THAT WAS A VOLUNTARILY ADVERTISING CODE, WASN'T IT? IT WAS A VOLUNTARY CODE? YOU WEREN'T REQUIRED TO DO THAT?
A. CORRECT.
Q. YOU WERE ABOUT TO BE REQUIRED TO DO THAT AT THE TIME THAT THE VOLUNTARY ADVERTISING CODE CAME INTO EXISTENCE; CORRECT?
A. I'M NOT AT ALL AWARE OF THAT. THAT DOESN'T SOUND RIGHT TO ME, BUT I CAN'T SAY WITH CERTAINTY.
Q. WERE YOU A PERSON WHO WAS INVOLVED IN CREATING THAT ADVERTISING CODE?
A. NO, I WAS NOT.
Q. AND THIS WAS A VOLUNTARY CODE THAT THE MANUFACTURERS OF CIGARETTES GOT TOGETHER AND SAID: "THIS IS WHAT WE CAN LIVE WITH"?
A. "THIS IS WHAT WE'LL DO."
Q. AND IF YOU FOLLOWED THE VOLUNTARY CODE -- WELL, LET ME ASK YOU THIS QUESTION: NOTHING PROHIBITED PHILIP MORRIS FROM DOING MORE THAN THAT VOLUNTARY CODE SET FORTH; ISN'T THAT TRUE?

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A. NO. I THINK, OVER THE YEARS, PHILIP MORRIS HAS DONE MORE THAN THAT VOLUNTARY CODE SET FORTH.
Q. AND DO YOU CONSIDER, YOURSELF, THAT PHILIP MORRIS DOES MORE THAN OTHER CIGARETTE MANUFACTURERS WITH RESPECT TO THAT?
A. I'M REALLY NOT IN A POSITION TO SAY. I THINK

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PHILIP MORRIS -- I DO KNOW PHILIP MORRIS DOES MORE THAN THE VOLUNTARY CODE CALLS FOR. I'D HAVE TO SIT AND LOOK AT WHAT EACH COMPANY DOES AND DOESN'T DO TO MAKE AN ASSESSMENT WHETHER PHILIP MORRIS DOES MORE OR LESS.
Q. SIR, HAVE YOU EVER BEEN A CIGARETTE SMOKER?
A. YES. I STILL AM.
Q. YOU STILL ARE?
A. YES.
Q. YOU SMOKE YOUR OWN BRAND (INDICATING)? NO. 1?
A. NO. 1. GO WITH THE LEADER.
Q. NO. 1.
CAN YOU GIVE US AN IDEA HOW MANY PACKS A DAY YOU SMOKE?
A. I SMOKE ABOUT 10 CIGARETTES A DAY.
Q. HALF A PACK A DAY?
A. YES. PROBABLY TODAY --
Q. A LITTLE BIT MORE?
A. PROBABLY A LITTLE BIT LESS, BECAUSE I'VE GOT TO RUN DOWNSTAIRS AND OUTSIDE.
MS. CHABER: I HAVE NOTHING FURTHER.
THE COURT: MR. OHLEMEYER?
MR. OHLEMEYER: VERY BRIEFLY, YOUR HONOR.

REDIRECT EXAMINATION

BY MR. OHLEMEYER: Q. MR. MORGAN, THROUGHOUT THE TIME YOU'VE WORKED AT OR WITH PHILIP MORRIS, HAS IT BEEN LEGAL TO SELL CIGARETTES IN THE UNITED STATES?
A. IT SURELY HAS.

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Q. HAS IT BEEN LEGAL TO ADVERTISE THEM?
A. IT SURELY HAS.
Q. KNOWING WHAT YOU KNOW ABOUT MARKETING, KNOWING WHAT YOU KNOW ABOUT ADVERTISING, THE EXPERIENCE YOU'VE HAD OVER THOSE 30 YEARS, IS THERE ANY WAY TO ADVERTISE A PRODUCT LIKE CIGARETTES IN A WAY THAT WOULD PREVENT PEOPLE WHO AREN'T OF LEGAL AGE FOR BUYING CIGARETTES FROM SEEING THE ADS?
A. YOU CAN MINIMIZE IT. I DO NOT BELIEVE YOU CAN PREVENT IT. IF YOU PUT A BILLBOARD ON A HIGHWAY, THERE WILL BE KIDS IN CARS.
Q. AND WITH RESPECT TO THE AUTO RACING AND THE TENNIS TOURNAMENTS, THINGS LIKE THAT THAT YOU WERE ASKED ABOUT --
A. YES.
Q. -- IS IT YOUR UNDERSTANDING THAT THE PEOPLE AT THE FEDERAL TRADE COMMISSION WATCH TELEVISION FROM TIME TO TIME?
A. THEY EXAMINED ALL THE BROADCASTS OF SPORTING EVENTS THAT THERE WERE CIGARETTE SIGNS. THEY HAD A VERY THOROUGH STUDY OF THAT, INCLUDING VIDEOTAPING, AND THEY WERE LOOKING TO SEE WHETHER OR NOT CIGARETTE SIGNS WERE GETTING EXPOSURE.
Q. YOU WERE ASKED SOME QUESTIONS ABOUT RETAIL POSITIONING AND SIGNS IN RETAIL STORES.
WHEN YOU WERE WITH MILLER BEER OR DOING WORK WITH MILLER BEER, THAT IS A PRACTICE THAT OCCURS IN THE RETAIL

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SALE OF BEER?

A. IT'S A PRACTICE THAT OCCURS. IT ALSO OCCURS AT KRAFT GENERAL FOODS. PART OF CONSUMER MARKETING IS RETAIL PRESENCE.

Q. INCLUDING POSITIONING OF FOOD PRODUCTS LIKE CHEESE?

A. SURE.

THEY FIGHT LIKE CRAZY WITH EACH OTHER IN THE REFRIGERATED SECTION TO SEE WHO GETS TO GO WHERE, HOW MUCH AND WHERE THEY GO.

Q. I WILL ASK YOU TO ASSUME THERE ARE SOME PIECES OF EVIDENCE, DOCUMENTS AND OTHER EXHIBITS, THAT HAVE BEEN ADMITTED INTO EVIDENCE IN THIS CASE THAT HAVE PHILIP MORRIS' LETTERHEAD ON THEM, AND ARE WRITTEN TO AND FROM CERTAIN PEOPLE, AND HAVE LISTS OF PEOPLE TO WHOM THEY WERE DISTRIBUTED.

IF THOSE DOCUMENTS OR OTHER PIECES OF EVIDENCE ARE DATED BETWEEN 1963 AND 1997 AND THEY CONTAIN THE NAME JAMES J. MORGAN OR J.J. MORGAN, ARE YOU THAT MR. MORGAN?

A. YES, I AM.

Q. AND FINALLY, MR. MORGAN, YOU WERE ASKED A FAIR NUMBER OF QUESTIONS ABOUT WHAT PHILIP MORRIS PAID YOU OVER THE YEARS TO WORK FOR PHILIP MORRIS; RIGHT?

A. YES.

Q. AND I THINK MS. CHABER HAD YOU DESCRIBE YOURSELF AS A LOYAL EMPLOYEE?

A. YES.

Q. AND AM I CORRECT, YOU CERTAINLY WEREN'T SUBPOENAED HERE TODAY?

A. NO, I WAS NOT.

Q. DO YOU KNOW WHETHER OR IF MS. CHABER COULD HAVE SUBPOENAED YOU IF SHE WANTED TO?

A. I BELIEVE SHE CERTAINLY COULD HAVE.

MS. CHABER: I WOULD OBJECT. THAT CALLS FOR A LEGAL CONCLUSION.

MR. OHLEMEYER: NO. I'LL SOLVE THE PROBLEM, IF YOU LET ME, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. OHLEMEYER: Q. IF I ASKED YOU --

THE COURT: IN ANY EVENT, THE OBJECTION CAME OUT AFTER THE ANSWER WAS GIVEN. YOU NEED TO --

MS. CHABER: I MOVE TO STRIKE, YOUR HONOR.

MR. OHLEMEYER: I WILL WITHDRAW THE QUESTION. YOU CAN STRIKE THE ANSWER. I'LL REASK IT.

THE COURT: ALL RIGHT. THEN I WILL STRIKE THE ANSWER.

MR. OHLEMEYER: Q. LET ME ASK YOU TO ASSUME, MR. MORGAN, THAT MS. CHABER COULD NOT SUBPOENA YOU TO COME HERE TODAY.

A. YES, SIR.

Q. LET ME ASK YOU TO ASSUME THAT I COULD NOT --

A. YES, SIR.

Q. -- SUBPOENA YOU TO COME HERE TODAY.

THERE IS NO DOUBT YOU ARE HERE.

A. THAT IS CORRECT.

Q. TELL US WHY YOU ARE HERE.

A. WELL, I'M HERE BECAUSE -- FOR A LOT OF REASONS.

I DO NOT HAVE TO BE HERE. I'M NOT REQUIRED TO BE HERE BY MY RETIREMENT.

I'M HERE BECAUSE I SPENT 30 YEARS OF MY LIFE IN

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MARKETING CIGARETTES, AND I KNOW -- BECAUSE I WAS THERE, I KNOW THAT THE ACCUSATIONS AND CLAIMS THAT PHILIP MORRIS MARKETED CIGARETTES TO MINORS ARE JUST PATENTLY FALSE. I KNOW AND --

MS. CHABER: I'M GOING TO OBJECT, YOUR HONOR, TO THIS SPEECH. I THINK --

THE COURT: ON WHAT GROUNDS, LEGAL GROUNDS?

MS. CHABER: ON THE GROUNDS THAT, ONE, THE QUESTION ITSELF WAS ARGUMENTATIVE THAT WAS ASKED.

TWO, IT'S IRRELEVANT TO THE ISSUES AS TO WHY HE DECIDED TO COME HERE IN THE SAME FASHION THAT IT WAS IRRELEVANT AS TO WHY MY CLIENT SUED PHILIP MORRIS.

THE COURT: HOLD ON. JUST STATE THE LEGAL GROUNDS.

YOU SAID ARGUMENTATIVE AND IRRELEVANT.

ARE THERE ANY OTHERS?

MS. CHABER: THAT WILL DO.

THE COURT: OKAY. OVERRULED.

MR. OHLEMEYER: Q. YOU CAN CONTINUE, MR. MORGAN.

A. I KNOW THAT PHILIP MORRIS HAS PROVIDED PUBLIC DOCUMENTS OR DOCUMENTS THAT ARE NOW PUBLIC, OVER 250,000 DOCUMENTS FROM THE MARKETING DEPARTMENT THAT I WORKED FOR. AND IN SIX OR SEVEN DEPOSITIONS AND TWO COURT APPEARANCES, I HAVE SAID THERE ARE NO DOCUMENTS THAT SHOW THAT PHILIP

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MORRIS, AS A MATTER OF STRATEGY, PROGRAMMING OR OTHER CHARACTERIZATION MARKETED TO YOUTH.

AND I HAVE CHALLENGED THE OTHER SIDE TO SHOW ME ONE DOCUMENT IN OVER 30 YEARS, 250,000 DOCUMENTS, THAT SHOW THAT PHILIP MORRIS DID THAT. AND I'M STILL ASKING THE QUESTION BECAUSE NO ONE STILL HAS DONE IT.

AND THE REASON IS IT NEVER HAPPENED. AND THEREFORE, THERE ARE NO DOCUMENTS. IT JUST NEVER HAPPENED. IT IS NOT THE CASE THAT PHILIP MORRIS MARKETED TO MINORS.

MR. OHLEMEYER: THAT IS ALL I HAVE. THANK YOU, YOUR HONOR.

THE COURT: MS. CHABER.

RECROSS-EXAMINATION

BY MS. CHABER: Q. SIR, YOU CAME HERE VOLUNTARILY, DID YOU NOT?

A. YES, I DID.

Q. AND YOU'VE COME VOLUNTARILY WHEN YOU TESTIFIED IN OTHER CASES?

A. THAT IS NOT TRUE.

Q. OH, YOU WERE SUBPOENAED OTHER PLACES?

A. YES, I WAS.

Q. OKAY. BUT HERE, MR. OHLEMEYER JUST ASKED YOU TO COME VOLUNTARILY?

A. THAT IS CORRECT.

Q. AND YOU DON'T LIVE IN CALIFORNIA, DO YOU?

A. NO, I DO NOT.

Q. AND YOU BROUGHT YOUR OWN LAWYER WITH YOU, DIDN'T

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YOU?

A. NO, I DON'T HAVE MY OWN LAWYER.

Q. YOU DON'T HAVE YOUR OWN LAWYER?

A. NO.

Q. YOU DIDN'T HAVE YOUR OWN LAWYER WHEN YOU TESTIFIED IN THE MINNESOTA TRIAL?

A. NO.

Q. DOES PHILIP MORRIS PAY FOR LEGAL DEFENSE FOR

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YOU?
A. I DON'T HAVE ANYTHING THAT I NEED TO BE LEGALLY DEFENDED ON. I HAVEN'T -- I HOPE I DON'T. BUT NO, I DON'T HAVE.
Q. SIR, LET ME JUST ASK YOU THIS. LET'S JUST ASSUME THAT THERE IS A LAWSUIT AND IT RESULTS IN A LOSS FOR PHILIP MORRIS.
CAN YOU MAKE THAT ASSUMPTION?
A. WHAT KIND OF LAWSUIT?
Q. A LAWSUIT WHERE PEOPLE ARE ALLEGING THAT THEY OR A STATE OR SOMEONE ELSE HAS BEEN HARMED FROM THE SALE OF CIGARETTES.
A. OKAY.
Q. ASSUME, SIR, THAT THAT LAWSUIT RESULTS IN A LOSS FOR PHILIP MORRIS.
A. OKAY.
Q. YOU CAN MAKE THAT ASSUMPTION?
A. I'M MAKING THAT ASSUMPTION.
Q. AND, SIR, YOU WOULD AGREE THAT SHOULD THERE BE ANY AFFECT ON STOCK PRICES AS A RESULT OF ANY LOSS OF A

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LAWSUIT, THAT YOU STAND TO GET HURT FINANCIALLY WITH RESPECT TO SHARES OF STOCK THAT YOU OWN AND THE OPTIONS THAT YOU OWN?
A. MADAM, I DELIVERED LAUNDRY, WORKED MYSELF THROUGH COLLEGE. I MADE A LOT OF MONEY AT PHILIP MORRIS. AND I COULD LOSE HALF OF IT AND THREE-QUARTERS OF IT AND LEAD THE LIFE THAT I LEAD NOW.
THE MONEY IS NOT IMPORTANT TO ME AT ALL.
Q. SIR, COULD YOU ANSWER MY QUESTION?
A. I DID.
Q. WOULD YOU LOSE MONEY, SIR, IF THE PRICE OF STOCK WENT DOWN?
A. OF COURSE I WOULD.
MS. CHABER: NOTHING FURTHER.
THE COURT: ANYTHING FURTHER?
MR. OHLEMEYER: NO, YOUR HONOR.
THE COURT: OKAY.
THE WITNESS: THANK YOU. WHAT DO I DO WITH THESE (INDICATING)?
THE COURT: MS. CHABER, DO YOU WANT THOSE MAGAZINES?
MS. CHABER: YES.
MR. OHLEMEYER: MAY THE WITNESS BE EXCUSED, YOUR HONOR?
THE COURT: MAY THE WITNESS BE EXCUSED?
MS. CHABER: YES.
MR. OHLEMEYER: YES. THANK YOU.
THE COURT: OKAY. YOU ARE EXCUSED.

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MS. CHABER: YOU GOT NERVOUS THERE FOR A MINUTE. YOU THOUGHT I WAS GOING TO SAY NO.
(WITNESS EXCUSED)
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